

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE DISTRICT OF NEW MEXICO

3           UNITED STATES OF AMERICA,

4                               Plaintiff,

5                       vs.                               NO:   CR-15-4268 JB

6           ANGEL DELEON, et al.,

7                               Defendants.

8                                       VOLUME 3

9           Transcript of Jury Trial before The Honorable  
10          James O. Browning, United States District Judge, Las  
11          Cruces, Dona Ana County, New Mexico, commencing on  
12          January 31, 2018.

13          For the Plaintiff: Ms. Maria Armijo, Mr. Randy  
14          Castellano, Mr Matthew Beck

15          For the Trial 1 Defendants: Ms. Amy Jacks,  
16          Mr. Richard Jewkes, Ms. Theresa Duncan, Mr. Marc  
17          Lowry, Ms. Carey Bhalla, Mr. Bill Maynard, Mr. Ryan  
18          Villa, Ms. Justine Fox-Young.

19                               Jennifer Bean, FAPR, RDR, RMR, CCR  
20                               United States Court Reporter  
21                               Certified Realtime Reporter  
22                               333 Lomas, Northwest  
23                               Albuquerque, NM 87102  
24                               Phone:     (505) 348-2283  
25                               Fax:       (505) 843-9492

SANTA FE OFFICE  
119 East Marcy, Suite 110  
Santa Fe, NM 87501  
(505) 989-4949  
FAX (505) 820-6349



MAIN OFFICE  
201 Third NW, Suite 1630  
Albuquerque, NM 87102  
(505) 843-9494  
FAX (505) 843-9492  
1-800-669-9492  
e-mail: info@litsupport.com

1	I N D E X		
2	EXAMINATION OF BRYAN ACEE		
3	By Mr. Castellano		803
4	By Mr. Lowry		941
5	By Mr. Maynard		958
6	By Mr. Villa		968
7	By Ms. Jacks		1027
8	REPORTER'S CERTIFICATE		1060
9	EXHIBITS ADMITTED		
10	Government 495 to 502 Admitted		849
11	Government 504 to 507 Admitted		849
12	Government 528 through 530 Admitted		904
13	Government 528 through 538 Admitted		905
14	Government 539 through 547 Admitted		896
15	Government 548 through 560 Admitted		841
16	Government 561 through 567 Admitted		872
17	Government 568 through 573 Admitted		878
18	Government 574 through 580 Admitted		882
19	Government 581 through 585 Admitted		885
20	Government 586 through 595 Admitted		864
21	Government 596 through 605 Admitted		860
22	Government 606 through 618 Admitted		855
23	Government 628 through 635 Admitted		888
24	Government 636 through 643 Admitted		875
25			

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 119 East Marcy, Suite 110  
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 FAX (505) 820-6349



MAIN OFFICE  
 201 Third NW, Suite 1630  
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 (505) 843-9494  
 FAX (505) 843-9492  
 1-800-669-9492  
 e-mail: info@litsupport.com

1 THE COURT: All right. Good morning,  
2 everyone. I appreciate everyone being here and  
3 ready to go. I don't think the jury is quite here  
4 yet, so why don't I see if there is anything we need  
5 to discuss. Is there anything else I can do for  
6 you, need to do?

7 MS. JACKS: Your Honor, I think there was  
8 one thing that we wanted to put on the record that  
9 we failed to do last night, and that was just the  
10 observation that when the jurors were brought in and  
11 seated, two of the jurors were visibly emotional and  
12 crying. I don't have my list, but I'll tell you  
13 which two.

14 THE COURT: While you're looking for that,  
15 Ms. Jacks, let me put a letter on the record that we  
16 had discussed at the bench during voir dire with Mr.  
17 Dixon. He's juror number 7 on the front row. He's  
18 from Albuquerque. We had his letter from his  
19 employer seeking his excusal. I'm going to have  
20 that marked as Clerk's Exhibit D to the Clerk's  
21 minutes.

22 All right, Ms. Jacks.

23 MS. JACKS: Thank you, Your Honor. The  
24 two jurors that were visibly crying and emotional  
25 when they were informed that they were actually on

1 the jury is a juror seated in the number 2 position,  
2 Dora Quinones; and the juror seated in the number 4  
3 position, Norah Harris. And I observed that. I  
4 also believed Mr. Lowry observed that, as well.

5 THE COURT: All right. I had supper last  
6 night with Ms. Wild. I called her from my phone and  
7 said, "How is the jury?" Because she meets with the  
8 jury before she leaves. And she said they were a  
9 good bunch, that they were doing well. I don't know  
10 if anybody would use the words "excited to be back  
11 there," but that they were doing well. Because I  
12 was concerned about, you know, a little bit of  
13 the -- I don't want to call it shock, but a little  
14 bit of the reality that they're about to serve for  
15 six to eight weeks.

16 So I then had supper, my wife and I, with  
17 Ms. Wild, and I repeatedly said, "Is that jury  
18 okay?"

19 She said, "It's a good bunch."

20 So let's watch them. Let's see what  
21 happens. I care greatly about them. I know we all  
22 do. So we'll keep an eye on them. But Ms. Wild --  
23 I had said, "Is anybody upset? Are they doing  
24 okay?"

25 For your information we got about seven

1 from the north, 11 from the south. I haven't  
2 mentally broken it down to see if, once we send them  
3 back, if it's going to be a little bit more even,  
4 six, six. But right at the moment, we've got more  
5 people locally. Interestingly, only one from Las  
6 Cruces. So we've got some people that are  
7 traveling. But from I think it's -- as far as I can  
8 tell, everybody is doing okay. But let's watch  
9 them, monitor them. I'm concerned about them, too,  
10 but I was told.

11 Anything else we need to discuss?  
12 Anything else I can do for you, Ms. Jacks?

13 MS. JACKS: I think there is one other  
14 thing that we discussed among ourselves, and that  
15 is, the Government has indicated that its first  
16 witness is going to be Special Agent Acee. And Mr.  
17 Acee hasn't been designated as an expert. I'm not  
18 quite sure what he's being called for this morning,  
19 but we would ask for just a brief offer of proof as  
20 to the topic or the purpose of his testimony, so we  
21 can make sure to make any appropriate objections.

22 THE COURT: All right. Mr. Castellano,  
23 are you calling Special Agent Acee?

24 MS. CASTELLANO: Yes, Your Honor. He's  
25 going to provide an overview of the investigation

1 and, therefore, an introduction to the SNM Gang, how  
2 he got here today. He's not going to be offering  
3 any expert opinions. We will be introducing  
4 photographs of SNM Gang members, including their  
5 tattoos, including the defendants. So we'll have  
6 those exhibits introduced through him, and that's  
7 pretty much it.

8 THE COURT: Okay. And he's going to be --  
9 if I understand, he's going to be called several  
10 times throughout your case.

11 MS. CASTELLANO: That's correct, Your  
12 Honor.

13 THE COURT: So he may be on for -- not  
14 days here, but a short period of time, and then move  
15 on to other people?

16 MS. CASTELLANO: Yes. And related to that  
17 topic, I know that in the motions practice as well  
18 as in a Touhy request, the defense had requested  
19 information about two civil suits in which Agent  
20 Acee was mentioned. I just want to make sure that  
21 there is no cross-examination involving those. I  
22 don't think there is any good faith basis to inquire  
23 into those matters, especially since there were no  
24 findings entered against Agent Acee. So I want to  
25 make sure that the defense doesn't try to poison the

1 jury with any of that information. I think it's  
2 irrelevant.

3 THE COURT: Anybody intend to bring up the  
4 civil lawsuits? Ms. Jacks, do you know?

5 MS. JACKS: I don't know. I can only  
6 speak for myself, and I'm certainly not bringing  
7 those up today.

8 THE COURT: If anybody brings them up,  
9 just approach the bench. Because maybe we discussed  
10 this, but I'm not real familiar with it, so I'll  
11 need to be a little bit educated on it.

12 MS. JACKS: I guess the one thing -- I  
13 hear what Mr. Castellano is saying. I'm not sure if  
14 he's offering Mr. Acee to testify that person A, B,  
15 or C is an SNM Gang member. If that's the case, I'm  
16 not quite sure what that's based on. It would  
17 appear to be hearsay unless somebody has admitted it  
18 directly to Agent Acee, and then there would be, I  
19 think, a Sixth Amendment issue. So I'm not clear on  
20 exactly how the Government is going to examine him  
21 on that.

22 THE COURT: Are you going to try to use --

23 MS. CASTELLANO: No.

24 THE COURT: No, he's not going to do that.

25 MS. CASTELLANO: He's not going to state

1 those opinions. He will talk about the tattoos and  
2 trends he has seen among the tattoos of the people  
3 photographed, but he's not going to render those  
4 opinions.

5 THE COURT: Okay. Let me start with the  
6 Government. Anything else we need to discuss before  
7 we bring the jury in? Anything else I can do for  
8 you, Ms. Armijo?

9 MS. ARMIJO: No, Your Honor.

10 THE COURT: How about any of the  
11 defendants? Anybody else have anything?

12 MR. VILLA: Your Honor, I know -- I'm  
13 sorry.

14 THE COURT: Let me get Ms. Duncan, since  
15 she was moving toward the podium. Then I'll come  
16 back to you, Mr. Villa.

17 MS. DUNCAN: I know the Government is  
18 going to introduce some exhibits today. I wonder if  
19 we could get exhibit numbers in case we have  
20 objections, or not. We're not spending too much  
21 time at the bench.

22 THE COURT: Are you able to do that,  
23 Mr. Castellano?

24 MS. DUNCAN: We do have the exhibits.

25 MS. CASTELLANO: I'll give them on the



1 break, Your Honor. I have a stack of photographs  
2 here, and they're welcome to look at them.

3 THE COURT: Does that work for you, Ms.  
4 Duncan?

5 MS. DUNCAN: You think he'll give me a  
6 list?

7 THE COURT: He'll show you at the break.  
8 Does that work?

9 MS. DUNCAN: Yes.

10 THE COURT: Mr. Villa, what did you have?

11 MR. VILLA: Your Honor, I know this was  
12 talked about pretrial, but I want for the record the  
13 rule to be invoked.

14 THE COURT: I've got it right here. So  
15 you want to invoke it now, or do you want me to ask  
16 on the record and let you invoke it in the presence  
17 of the jury? What would you prefer?

18 MR. VILLA: I'd like to invoke it now.

19 THE COURT: All right. So I'll just  
20 instruct the jury. If nobody wants to invoke it  
21 publicly, I'll just make the statement to the jury  
22 before openings begin.

23 What else from the defendants? Mr. Lowry,  
24 you had something?

25 MR. LOWRY: Well, Your Honor, should we

1 turn the podium before the jury comes in?

2 THE COURT: It's up to y'all. If y'all  
3 want to readjust the podiums, that's y'all's  
4 business.

5 MS. ARMIJO: I tried this morning and the  
6 most it can go, which may be fine for the defense,  
7 is right here. But it wasn't comfortable for me,  
8 and so I think I'm going to just have to stand  
9 because I was told that this cannot be moved. So  
10 it's literally -- that's what I --

11 THE COURT: And who told you that?

12 MS. ARMIJO: Ms. Standridge.

13 THE COURT: Okay.

14 MS. ARMIJO: They said that IT would have  
15 to come in and move things.

16 THE COURT: Is that true? Can they get  
17 any flexibility out of that?

18 He'll check and see if he can get any  
19 flexibility. If he can, y'all kind of tell him what  
20 you'd prefer.

21 While y'all are adjusting that, can I  
22 confirm the order of the openings? What Ms. Wild  
23 told me, it's Mr. Sanchez, Mr. Herrera, Mr. Perez,  
24 and then Mr. Baca. Is that the order?

25 MS. BHALLA: Yes, Your Honor.

1 MR. VILLA: Yes, Your Honor.

2 THE COURT: Is that better for you, Mr.  
3 Lowry?

4 MR. LOWRY: I'm trying to get a sense of  
5 it, Your Honor. It's fine for me.

6 MR. VILLA: You have the attorneys for  
7 each team that are giving the openings?

8 THE COURT: Let's see. For Mr. Sanchez,  
9 is it Mr. Jewkes?

10 MR. JEWKES: Ms. Jacks will be making the  
11 opening, Your Honor.

12 THE COURT: Ms. Jacks. All right. I'll  
13 change that.

14 And for Mr. Herrera, it's going to be Mr.  
15 Maynard; is that correct? Are you going to give the  
16 opening?

17 MR. MAYNARD: It will be Ms. Bhalla.

18 THE COURT: Ms. Bhalla. And for Mr.  
19 Perez, it's going to be Ms. Fox-Young?

20 MS. FOX-YOUNG: That's right, Judge.

21 THE COURT: And then for Mr. Baca, it's  
22 going to be Mr. Lowry?

23 MR. LOWRY: That's correct, Your Honor.

24 THE COURT: Ms. Armijo, you're up first.  
25 Does that work for you. Is that better?

1 (A discussion was held off the record.)

2 THE COURT: All right. Does this work for  
3 you, Ms. Armijo? All right. Everybody ready?

4 All rise.

5 (The jury entered the courtroom).

6 THE COURT: All right. Everyone be  
7 seated.

8 Good morning, ladies and gentlemen. Thank  
9 you for being here on time and ready to go. I  
10 appreciate it. Last night before Ms. Wild headed  
11 back to Albuquerque, I called her on the phone and  
12 asked, "Is everybody okay?"

13 And she said everybody seemed to be okay.  
14 And she didn't use the word "excited," but she said  
15 y'all were okay, and she said you were a great  
16 bunch. She said I would enjoy working with you, and  
17 that y'all were a really good bunch already, and we  
18 appreciate what you've already done for us. Thank  
19 you for being back and ready to go.

20 I appreciate counsel being ready to go so  
21 we can keep things going today and keep it on track.

22 The rule has been invoked in this case.  
23 And what that means, there's a rule of law that  
24 witnesses may be excluded from the courtroom so that  
25 they cannot hear the testimony of other witnesses.

1 This rule does not apply to parties or expert  
2 witnesses. The rule of exclusion has been invoked  
3 in this case, and all witnesses to whom the rule  
4 applies will be required to remain outside the  
5 courtroom until they are called to testify.

6 Witnesses excluded from the courtroom should not  
7 discuss with other witnesses their testimony before  
8 they or the other witnesses testify, but they may  
9 discuss their testimony with the lawyers.

10 All right, Ms. Armijo, does the Government  
11 have an opening statement?

12 MS. ARMIJO: Yes, Your Honor.

13 THE COURT: Ms. Armijo.

14 MS. ARMIJO: Counsel. May it please the  
15 Court?

16 THE COURT: Ms. Armijo.

17 MS. ARMIJO: The S is about violence. We  
18 get respect through violence. Defendant Daniel  
19 Sanchez' view about the Sindicato de Nuevo Mexico,  
20 known as the S, or the SNM, the largest prison gang  
21 in New Mexico's prison history.

22 During the course of this trial, you will  
23 hear testimony about how the SNM was born out of one  
24 of the bloodiest riots in United States history in  
25 the '80s. They gained in numbers until it

1 eventually became the largest prison gang in New  
2 Mexico, controlling the prisons through acts of  
3 violence, acts of extortion, and controlling the  
4 drugs. Basically, the SNM ran the prisons, in part  
5 because of their large numbers.

6 New Mexico Corrections Department had to  
7 do something to gain control. And in the late '90s,  
8 they created a security threat group, a specialized  
9 unit designed to deal with prison gangs. They  
10 created a system to validate prison gangs, to  
11 officially recognize them as a security threat  
12 group, and the SNM was validated as such. And then  
13 they also created a system, a classification system,  
14 in which gang members were to be housed. They  
15 created a level system, and gang members could go  
16 no -- not underneath a Level 4, the classifications  
17 being Level 4 through 6 for gang members. And this  
18 was kept to keep the general population of the  
19 prisons safe.

20 And so the conflict continued with  
21 Corrections and SNM each trying to control one  
22 another; SNM using the rule of the prisons against  
23 them, SNM using the weakness of correctional  
24 officers to bring them in contraband, to find their  
25 weaknesses, and to have certain officers assist

1 them.

2           So Corrections will do things like move  
3 leaders out of the state, away from gang members.  
4 That didn't stop the lines of communication or the  
5 leadership. Each prison facility -- and you will  
6 hear that about there are various prison facilities  
7 throughout the state -- would have members that were  
8 leaders. In the old days, you will hear testimony,  
9 that there was a tabla, a group of men that would  
10 control and actually vote on things. There would be  
11 someone that would hold the keys, or the llaves, for  
12 different facilities, who would ensure that gang  
13 business was being accomplished.

14           The SNM, you will hear, has rules. For  
15 the most part, at least one person has to bring you  
16 into the gang, stand up for a prospect. You have to  
17 do things for the gang or earn your huesos, your  
18 bones. While in custody, you have to be willing to  
19 commit acts of violence at any time as directed, all  
20 in the name of the gang. You have to be willing to  
21 assist with the war between prison gangs and  
22 correctional officials, because there were other  
23 prison gangs that were their sworn enemies.

24           When out of custody, you didn't just stop  
25 being an SNM Gang member; you still have to put work

1 out on the streets, whether that be drug activity  
2 such as trafficking to assist the goals of the gang,  
3 or hitting or killing other rival gang members on  
4 sight; and in general, committing crimes of violence  
5 such as murder, kidnapping, and other types of  
6 witness intimidation.

7 You are a member for life, blood in, blood  
8 out, and you do not, you do not, in any manner  
9 cooperate with law enforcement, because cooperation  
10 of any type will get you killed.

11 You will hear how the SNM has no problem  
12 enforcing these rules, even if it means you kill  
13 your best friend, your brother, your carnal. The  
14 rules are the rules, and you must pay for any  
15 violations, and members have paid with their lives.

16 The defendants in this case, you will hear  
17 testimony, are all SNM Gang members. Anthony Baca,  
18 known as Pup, is the leader of the gang. Daniel  
19 Sanchez, known as Dan Dan, one of the leaders  
20 underneath Pup. Carlos Herrera, you will hear his  
21 nickname is Lazy, another influential member of the  
22 gang, leader of the gang. And Rudy Perez, known as  
23 Ru Dog, a veteran member of the gang.

24 During the course of this trial, we're  
25 going to go back to 2014, and you will hear how



1 Javier Molina, a validated SNM Gang member and an  
2 inmate at the Southern New Mexico Correctional  
3 Facility, was murdered by his fellow gang members.  
4 He was stabbed 43 times with shanks, which you will  
5 hear are weapons made in prison. And he never stood  
6 a chance to survive.

7           The hit, or the order, had been  
8 outstanding for at least a couple years before his  
9 death. Paperwork, which is proof that -- of  
10 cooperation that is needed to carry out the hit, had  
11 been sent down previously at the direction of  
12 Anthony Baca as leader. But other members had not  
13 followed through. It was based on a statement that  
14 Javier Molina gave to law enforcement years before,  
15 but time doesn't eradicate a green light, which is  
16 an order to kill someone. Because as Rudy Perez  
17 states, nobody deserves a free pass on a violation.  
18 If they do something serious enough to deserve the  
19 violation, they have to accept it, right or wrong.

20           It is important to know that SNM Gang  
21 members were held in a building at the Southern New  
22 Mexico Correctional Facility, also known as  
23 Southern. They were divided up into three pods.  
24 There was a yellow pod, a blue pod, and a green pod,  
25 all of which were connected with one door, but they

1 housed separate inmates. And each pod contained  
2 several cells which housed inmates.

3 And so on March 7, 2014, a  
4 well-orchestrated long-standing plan was finally  
5 carried out. The day before, on March 6, the  
6 paperwork came down for at least the second time to  
7 Southern. It was brought down by gang members who  
8 were being transferred from up north, from a  
9 facility up north, down to the south.

10 You will hear that the members who were  
11 down at Southern, the gang members, had been waiting  
12 for the paperwork and proof. As soon as it arrived,  
13 Lupe Urquizo provided it to Carlos Herrera. And  
14 Carlos was in charge of the yellow pod.

15 Herrera reviewed the paperwork and after  
16 approving of it, passed it on to the blue pod  
17 underneath the doors in between, for the hit to  
18 finally be carried out. Because of the paperwork  
19 being passed out, people could now act on it.

20 Mario Rodriguez, known as Blue. He's the  
21 one that received the paperwork, and at that  
22 point -- and you will hear from him. At that point,  
23 he showed the paper to Daniel Sanchez, who was in  
24 charge of the blue pod where Javier Molina was being  
25 housed. After reviewing the paperwork, Sanchez put

1 things into motion. He ordered Rodriguez to have  
2 Timothy Martinez, who is known as Red, a good friend  
3 of Javier Molina's, first go into Javier Molina's  
4 cell at the designated time and render him  
5 unconscious.

6 Sanchez then wanted gang members Jerry  
7 Armenta and Jerry Montoya to do their actual  
8 stabbing, in part because they were gang members,  
9 but they hadn't earned their bones yet; they had to  
10 prove themselves to the gang.

11 Sanchez then went into Rudy Perez' cell.  
12 Rudy Perez had a walker and provided a piece of the  
13 walker to Mario Rodriguez and shanks were made out  
14 of the pieces of the walker.

15 At 4:00 p.m. on the 7th, Corrections  
16 conducted the normal count, which you will hear  
17 testimony that at every day at 4:00, at that time,  
18 inmates have to go into their cells for the  
19 correctional officers to literally do a count. And  
20 that's what was done. And during that hour-long  
21 count, Rodriguez was able to make two shanks out of  
22 the pieces of the walker from Rudy Perez.

23 When the doors opened at 5:00 p.m.,  
24 inmates came out of their cells for tier time, which  
25 you will hear is a time for inmates to socialize out

1 in the main area.

2           Around 5:15, Javier Molina went into his  
3 cell with Rodriguez and Martinez under the guise of  
4 getting high. But as directed, Martinez choked out  
5 Molina and he went unconscious. Montoya and Armenta  
6 came in as planned and took over and started  
7 stabbing him.

8           But Javier was bigger than Montoya and  
9 Armenta, and he actually woke up. You will see the  
10 video of him coming out of his cell, running down  
11 the stairs to the door in an effort to get help. As  
12 he was running downstairs with his bloody chest, he  
13 told Rodriguez, "I am done, carnal. I am done."  
14 Those would be his last words. Rudy Perez would  
15 later say about the murder, "We all have our part,  
16 you know what I mean? One way or another, homes,  
17 everybody has their part, no matter how big or  
18 small. If you are asked to do something or  
19 whatever, that's what you do, no questions."

20           And the evidence will show that each of  
21 these defendants had an important role in this  
22 murder, an active role for the murder to be carried  
23 out.

24           Now, before 2014 the majority of SNM Gang  
25 members were being housed at Southern. Anthony Baca

1 was even housed there for a time period, but he was  
2 moved back up to the Penitentiary of New Mexico in  
3 2013 after prison officials had received information  
4 that his life was in danger, and they acted upon it  
5 and moved him up north.

6 Baca was not happy about this decision.  
7 In fact, he tried to reason with prison officials  
8 about moving him back down to Southern with his  
9 prison family, with his familia. And in January and  
10 February of 2014, he even met with prison officials.  
11 He proposed to them to maintain a peaceful  
12 environment down at Southern, to call a ceasefire  
13 with rival gang members and put a sudden halt to  
14 recruiting, and prevent SNM Gang members from  
15 targeting other SNM Gang members who, in his words,  
16 wished to subject themselves to the RPP Program,  
17 which is the program that prison officials have for  
18 inmates that want to leave a gang. However, based  
19 upon a meeting that they had with him, the  
20 administration refused to give in to his demands.

21 When Corrections refused to send him back  
22 down to Southern, the hit was finally acted on at  
23 his direction. The S was trying to send a message  
24 to Corrections. As a result of the Javier Molina  
25 murder, the S was put back down -- put in lockdown,

1 and several members were moved back north and to  
2 even more restrictive housing. Baca and Sanchez  
3 were moved out of state. Eventually, all of the S  
4 would be moved back north, where they would  
5 initially be placed in Level 6 housing which is the  
6 most restrictive housing.

7 Once again, the SNM was not happy about  
8 this lockdown. They thought their rights had been  
9 stripped away, and eventually they wanted to make  
10 yet another statement, retaliate based on their  
11 feelings of mistreatment by prison officials.

12 At the same time, the prison officials  
13 were slowly trying to give members more privileges,  
14 such as giving them more recreation time, although  
15 it was in a solitary fashion; allowing one phone  
16 call and one visit a month, eventually increasing  
17 it, six months later, to two phone calls and two  
18 visits a month, and again, six months later, to four  
19 phone calls and four visits a month. And prison  
20 officials in July of 2015 actually had town hall  
21 meetings with SNM Gang members to inform them that  
22 they would be returning them to their normal Level 4  
23 activities. And by that, they would actually get  
24 their tier time back.

25 But yet, on the very first day that that

1 was allowed, within hours of being let out -- which  
2 they were only being let out four at a time --  
3 Julian Romero, a validated, long-standing SNM Gang  
4 member, was brutally attacked.

5 Now, this hit, you will hear, was  
6 outstanding. It went back to a fight more than 10  
7 years before between Romero and Gerald Archuleta,  
8 who is a former gang leader known as Styx. A fight  
9 that caused the factions in the S that led to --  
10 factions in the S; a fight that led to Romero  
11 actually being shot by a soldier for the S. The  
12 issues between Romero and Styx stems from the fact  
13 that Romero got out of the prison and became  
14 romantically involved with Styx's wife. That is  
15 something that is prohibited in the SNM. It's not  
16 acceptable for you to steal a member's woman.

17 And so word came down from the leader of  
18 the gang that Romero should be hit, the leader at  
19 the time being Baca, even after all the time had  
20 passed. In this case, he was beaten, not killed;  
21 and once again, in 2015, SNM members were back on  
22 lockdown.

23 At the same time that all of this was  
24 going on, leaders were still upset about the housing  
25 situation. Baca is still out of state and the

1 leaders in New Mexico were quite upset about it. In  
2 order to make a statement, another plan was created.  
3 "We want Gregg Marcantel, Secretary for Corrections,  
4 and Dwayne Santistevan to be taken out." A written  
5 directive in a letter that Robert Martinez, or Baby  
6 Rob, a leader of the SNM at the time, sent to a  
7 soldier on the street. The S set out to murder two  
8 very important people, Gregg Marcantel, as you heard  
9 the head of Corrections, a member of the Governor's  
10 cabinet; and Dwayne Santistevan, who you will hear  
11 was the head of the STIU, the Security Threat  
12 Intelligence Unit at the time. "Get the message  
13 out."

14 Baca stated, "We need to make a move, but  
15 not any move. We need to go to the top. Marcantel,  
16 Santistevan, the wardens; we need to make our  
17 presence felt again. Molina was just a building  
18 block for bigger jobs, like Marcantel, and get the  
19 respect we once had."

20 Fortunately for Marcantel and Santistevan,  
21 one of the persons that received the letters to  
22 assist in carrying out murders decided to cooperate.  
23 SNM members on their own came to officials, wanting  
24 to end the violence, to avoid the violence, and to  
25 escape the lifestyle.



1           One of the things that I should mention  
2 here is that you will hear from SNM Gang members on  
3 the stand who will shed light, who will illuminate  
4 things that happened in the dark side of prison  
5 life. Hard criminals that have been sentenced to  
6 hard time. They aren't choir boys. These are men  
7 with violent criminal histories who will come in and  
8 tell you about the violent crimes that they  
9 committed all in the name of the SNM. And you will  
10 hear how some of them have pled guilty to murder and  
11 other charges, and how they hope that the judge will  
12 give them a break eventually for their cooperation.  
13 Some of them have even been released, and you will  
14 hear about the troubles that they've encountered on  
15 the streets, because sometimes it's hard to break  
16 old habits or to deal with the weight of it all.

17           And you will hear about all the benefits  
18 that they have received from the Government which in  
19 some cases includes financial assistance.

20           And so the investigation into the SNM was  
21 commenced, and that included moving Baca in 2015  
22 back into the state of New Mexico and putting him  
23 next to a cooperator, who would then record him.  
24 And eventually, Baca was able to get another SNM  
25 Gang member, Christopher Garcia, a drug trafficker

1 for the S who was out on the streets, to give a  
2 firearm to an SNM Gang member who was a good soldier  
3 for the S, to kill Marcantel. And in late November  
4 2015, a firearm had been given to that person at  
5 Garcia's house specifically to kill Gregg Marcantel.

6 Fortunately for Gregg Marcantel, the  
7 person, the soldier on the street, that they had  
8 trusted had already been working with law  
9 enforcement, and so the transaction was recorded and  
10 the firearm was not used for its intended purpose.  
11 As Baca said, "If they would have let me out, Javier  
12 wouldn't be dead. That man would still be alive.  
13 But they didn't, and what's done is done. They  
14 called my bluff, and now they have a dead man on  
15 their hands."

16 So you will learn through the evidence  
17 that for SNM, it's all about power and respect. In  
18 prison there is one surefire way to get that.  
19 That's through fear and violence, and through fear  
20 and violence extends to the streets. You will hear  
21 Carlos Herrera say, "They fear us because they don't  
22 have it in them to kill. They ain't killers.  
23 That's the difference between them and us."

24 The SNM wasn't getting respect anymore  
25 from Corrections. In their minds, they felt they

1 were losing their power. And so they did what they  
2 needed to do. No more just beating up people. It  
3 was time for violence, time to make a statement.  
4 Time to shank a man 43 times, time to kill the top  
5 of Corrections. Time to exert their power to show  
6 that they would not give in to anyone. Time to go  
7 back to the good old days when the S gets respect.

8 At the end of this trial, we will speak to  
9 you again, and when we do, we'll walk through each  
10 of the defendants' violent acts, all they have done  
11 in the name of the SNM, all done for power and  
12 respect and to maintain or increase their position  
13 in the S, and ask you to find each of these men  
14 guilty.

15 Thank you.

16 THE COURT: Thank you, Ms. Armijo.

17 Ms. Jacks, do you have an opening  
18 statement for Mr. Sanchez?

19 MS. JACKS: I do, Your Honor.

20 THE COURT: Ms. Jacks.

21 MS. JACKS: Thank you very much. We have  
22 some slides that we're going to use.

23 MS. ARMIJO: And Your Honor, since nothing  
24 has been admitted, we will object to anything, since  
25 nothing has been provided to us ahead of time.

1 THE COURT: Is this like a PowerPoint?

2 MS. JACKS: It is.

3 THE COURT: We'll see what the PowerPoint  
4 is.

5 MS. JACKS: I have a copy right here. You  
6 can flip through it, if you like, while we get it up  
7 on the screen.

8 MS. ARMIJO: Yes, Your Honor. May we  
9 approach?

10 THE COURT: You may.

11 (The following proceedings were held at  
12 the bench.)

13 MS. ARMIJO: Your Honor, this is the first  
14 time we're seeing it. None of these have been  
15 admitted pretrial. It is pictures.

16 MS. JACKS: Those are from the exhibits.

17 THE COURT: Hold on. Let Ms. Armijo make  
18 her record.

19 MS. ARMIJO: They are from the exhibits,  
20 but the problem is: Nothing has been admitted. We  
21 didn't agree to the admission of any of these  
22 exhibits.

23 THE COURT: Let me take a look at them.

24 MS. ARMIJO: So we are strongly opposing  
25 this. What are these right here? SNM?

1 MS. JACKS: That's what I'm going to talk  
2 about. That's a moral compass.

3 THE COURT: Just a demonstrative?

4 MS. JACKS: It is. Once you get past the  
5 ones that we've offered in evidence in our exhibit  
6 list, they're just demonstrative slides that go  
7 along with what I'm going to talk about, what the  
8 evidence is going to show, some of which Ms. Armijo  
9 referred to in her opening statement of --

10 THE COURT: What is this a picture of?  
11 Just a guy?

12 MS. JACKS: Right.

13 THE COURT: Any guy?

14 MS. JACKS: This is a threat. We're going  
15 to -- that goes along with the discussion about the  
16 threats and promises.

17 THE COURT: These are demonstrative?

18 MS. JACKS: Exactly.

19 MS. ARMIJO: I can't see. I'm too short.

20 THE COURT: I'm just going through them.

21 MS. ARMIJO: I can't see, so --

22 MS. JACKS: You've got a couple inches on  
23 me.

24 THE COURT: Well, I think it's okay.  
25 These are pretty generic sorts of things, and most

1 of them are just demonstratives. I think it's okay.  
2 So I'll overrule the objection.

3 MS. JACKS: Thank you, Your Honor.

4 (The following proceedings were held in  
5 open court.)

6 THE COURT: All right. Ms. Jacks.

7 MS. JACKS: Thank you, Your Honor.

8 Good morning, ladies and gentlemen. I  
9 guess I want to talk about the elephant in the room,  
10 to just get started. You know, the trial is just  
11 beginning, and there is no evidence. You guys  
12 haven't heard one piece of evidence yet. But a lot  
13 of you, as you've told us Monday and Tuesday, have  
14 heard things about this case and about the  
15 individuals that are charged, Mr. Sanchez included.

16 And when I was thinking last night about  
17 what I wanted to say to you, I was reminded of the  
18 Supreme Court opinion -- a Supreme Court opinion  
19 written by Justice Hugo Black. And as the case may  
20 be, Justice Black actually wrote one of the opinions  
21 in the Pentagon Papers case. And in that opinion,  
22 what Justice Black recognized was how important a  
23 free press was in exposing government corruption.  
24 It's the subject of a movie out. But Justice Black  
25 also realized that there was a real tension between

1 the free press and the rights of a criminal  
2 defendant. And what he wrote in a different case, a  
3 case called Bridges versus California, is up here on  
4 the screen, that legal trials are not like  
5 elections, to be won through the use of the meeting  
6 hall, the radio, and the newspapers. We can go to  
7 another slide.

8 He said in that same opinion that "The  
9 very word 'trial' connotes decisions on the evidence  
10 and arguments properly advanced in open court."

11 And that's what we're here for today. And  
12 I guess in talking with you on Monday and Tuesday --  
13 I mean, we all realized you're a group of  
14 conscientious, thoughtful, fair-minded people. And  
15 I would submit to you in the spirit of these  
16 comments by Justice Black, that instead of trying  
17 the case on what you read in the press, see on TV,  
18 get a push notification on your phone, or hear from  
19 some clerk in the jury room, let's try this case  
20 based on what's presented here in court and the  
21 evidence that you're going to hear through the  
22 course of this trial.

23 The jury trial, I think as the judge told  
24 you the other day, is a key component of our  
25 government, and it's been in place for over 200

1 years. And I think we all owe it to ourselves and  
2 to our conscience, we owe it to the Court and to the  
3 people charged with these very serious crimes to  
4 give it our best shot and to make a decision based  
5 on the evidence and the arguments that are presented  
6 here in this courtroom, the trial.

7 So that being the case, I want to get down  
8 to what this trial is about, at least with regard to  
9 Mr. Sanchez. And it's about the homicide of Javier  
10 Molina at the Southern New Mexico Correctional  
11 Facility. I just pulled this off of Google Maps,  
12 but where Southern New Mexico Correctional Facility  
13 is, it's a little bit south of the 10 freeway and a  
14 little bit west of Las Cruces. This is an overview,  
15 and you can kind of see the prison facility there,  
16 isolated off the freeway exit.

17 The evidence in this case is going to show  
18 you that the environment at Southern New Mexico  
19 Correctional Facility is austere. This is the  
20 housing unit. It called Unit 1-A, B pod, or blue  
21 pod, you'll come to know, based on what you see in  
22 the evidence. This is the housing unit where Mr.  
23 Molina was killed. And we can go to the next slide.

24 It's in an austere environment. The  
25 inmates make few decisions for themselves. They're



1 told when to get up, when to go to bed. They're  
2 told what they can eat and when they can exercise.  
3 They're told what they can wear and when they can  
4 have contact or a visit with their loved ones.  
5 They're limited in their personal calls and their  
6 personal property.

7 This is a typical cell at the Southern New  
8 Mexico Correctional Facility. This is in a  
9 neighboring pod. It looks orange, but it's called  
10 yellow pod. And as you can see, the picture on the  
11 left is the entrance to the cell. The picture on  
12 the right sort of shows you what you see when you go  
13 into the cell. The first thing you come to is a  
14 little clothes hamper, or a place where the inmate  
15 is supposed to store their personal property. And  
16 then there is a little desk.

17 These are three pictures of the inside of  
18 the cell. And just opposite the desk area that you  
19 see is a combination sink and toilet. And you see  
20 the bed, a pallet on a concrete slab.

21 It's an environment of oppression, an  
22 environment of control, an environment that's  
23 extremely unpleasant.

24 It's also an environment where the inmates  
25 are under constant surveillance, constant

1 surveillance from correctional officers. This is a  
2 picture -- it's not the greatest picture. You'll  
3 see more like it during the course of this trial.  
4 But it's a picture of the booth where the officers  
5 are and where their surveillance equipment is  
6 located. And on the top is basically -- it's like a  
7 one-way mirror. The correctional officers are  
8 behind that, and the little cutout there you see in  
9 the middle is for a gun to be stuck through. In  
10 case there is some sort of disturbance, the  
11 corrections officers in the booth can fire off  
12 various things, beanbags, whatever they need to do  
13 to try to control any sort of disturbance.

14           The other thing you'll notice is right  
15 sort of along the bottom of the correctional officer  
16 booth you see the round things? There's one right  
17 above the exit sign. Go a little bit further to the  
18 left and you'll see one in the corner. There are  
19 some around the corner, too. You'll see those  
20 pictures. That's video surveillance. And the unit  
21 is under constant video surveillance. Evidence will  
22 show that it's recorded and stored in the prison  
23 computers.

24           And what that means is, when there is a  
25 crime committed on a unit, there is video showing

1 what happened. There are also officers in the  
2 booth, if they're paying attention, that see what  
3 happened.

4 The charges against Mr. Sanchez involve a  
5 stabbing of an inmate named Javier Molina on March  
6 7, 2014. We don't need to linger on this slide. We  
7 can go forward, but there is no doubt the evidence  
8 in this trial will show that Mr. Molina was stabbed  
9 on that date at the Southern New Mexico Correctional  
10 Facility. And these are photographs of the two  
11 weapons that were recovered right after Mr. Molina  
12 was stabbed that were, I think you'll hear  
13 testimony, used to stab him.

14 The people that stabbed him -- the people  
15 that stabbed him are two individuals, and you see  
16 their pictures here: Jerry Armenta and Jerry  
17 Montoya.

18 Now, I don't know the Government's trial  
19 strategy and who they're going to call, but these  
20 two have been designated Government witnesses. So  
21 the two guys that actually stabbed Mr. Molina are  
22 going to come in here and testify as witnesses for  
23 the Government.

24 Timothy Martinez. I think Ms. Armijo  
25 explained his role a little bit. Timothy Martinez

1 is also going to come in here and take an oath to  
2 tell the truth and sit on that witness stand and  
3 testify for the Government.

4 Mr. Martinez is the person that  
5 incapacitated Mr. Molina so that Armenta and Montoya  
6 could try to kill him. Timothy Martinez -- I got a  
7 picture there of a tattoo you'll see on his stomach,  
8 "Me against the world."

9 And finally, Mario Rodriguez. Mario  
10 Rodriguez, as Ms. Armijo told you, is the person  
11 that supplied the weapons and sort of supervised the  
12 actual killing of Mr. Molina. We expect that you'll  
13 also see Mario Rodriguez come into this courtroom as  
14 a Government witness, take an oath to tell the  
15 truth, and sit up on that witness chair and tell you  
16 his story.

17 The evidence in this case is going to show  
18 you that Mr. Armenta, Montoya, and Rodriguez were  
19 easily and very rapidly identified as the killers of  
20 Mr. Molina, and they very immediately started facing  
21 the consequences of those actions.

22 Prison is a harsh environment, and you and  
23 I have a value system and make decisions based on  
24 our values and what's important to us and try to  
25 follow those values in living as a good citizen, as

1 a good person. But I would say we operate under a  
2 moral compass.

3 Not everyone in prison operates with a  
4 moral compass. And in fact, a lot of people in  
5 prison have a moral compass that's broken. And when  
6 those types of individuals are faced with  
7 punishment, punishment like even worse conditions of  
8 confinement that they've been living in, possibly  
9 further lengthy or life-long incarceration, the  
10 evidence is going to show you they begin to look for  
11 a way out of it. And the way out of it is a way --  
12 a way that they can try to avoid the consequences of  
13 their criminal behavior. And I want to just give  
14 you an example, and I think you're going to hear  
15 from this person, too. And that's an individual  
16 named Billy Cordova.

17 Mr. Cordova, I think the evidence is going  
18 to show you, made a deal to become a Government  
19 witness in part to avoid being charged as a  
20 defendant in this case.

21 I skipped something. Excuse me. My point  
22 is, I guess, when these people with a lack of a  
23 moral compass or a broken moral compass start  
24 calculating what they're going to do to get out of  
25 trouble, they have one goal in mind, and that is:

1 What can they do to help themselves? It's all about  
2 me.

3 And I want to go back. Mr. Cordova is one  
4 of those individuals. And he told us in a pretrial  
5 hearing, and I think he'll tell you again from the  
6 witness stand, that when he sees a weakness in the  
7 system, he exploits it. That's just a day at the  
8 office for Mr. Cordova. And I think you'll see  
9 that's a mindset that pervades or will pervade the  
10 testimony of many of these Government witnesses.

11 As I was saying, the killers, Armenta,  
12 Montoya, Rodriguez, they were arrested and charged  
13 in state court. What you're going to learn through  
14 the course of this trial is: Because of that  
15 process, they had access to what's called the  
16 discovery, the police reports, the witness  
17 statements, the information gathered by law  
18 enforcement to prosecute the case, the killing of  
19 Mr. Molina. They had access to that information.

20 They also had access to each other, and  
21 you're going to hear how the Government witnesses in  
22 this case have had continued access to the discovery  
23 in the case and to each other, so they can have  
24 plenty of time to talk and think about how they're  
25 going to exploit the situation.

1           Now, the evidence in this case is going to  
2 show you that the homicide of Mr. Molina was  
3 essentially investigated by three law enforcement  
4 entities. First, the New Mexico Department of  
5 Corrections, where the killing occurred. Second,  
6 the New Mexico State Police. They're the agency  
7 that responded to the prison to immediately handle  
8 the investigation of the Molina homicide. And then  
9 finally, the FBI became involved. So you have three  
10 law enforcement agencies sort of working together to  
11 put together the Government's case.

12           What the evidence is going to show you is  
13 that members of these various agencies use what I  
14 call motivators to induce these Government witnesses  
15 to get on board with the story. A motivator, one  
16 very powerful motivator, you'll see, based on the  
17 evidence, is threats. The other goes hand in hand  
18 with threats: Promises. And through the use of  
19 these threats and promises, the Government  
20 cultivated these witnesses. And what you're going  
21 to hear is that not only -- well, Ms. Armijo talked  
22 to you about some of the witnesses were provided  
23 benefits, and I think she called it financial  
24 assistance. There were other benefits provided.  
25 But the other thing that law enforcement did, once a

1 witness was on board as a Government witness, you'll  
2 see from the testimony, is that they turned a blind  
3 eye. They kind of just, you know -- if I don't see  
4 it, it's not happening.

5 And after signing up to be Government  
6 witnesses, you'll see, based on the evidence, the  
7 benefits to these witnesses start rolling in. I'm  
8 just going to go through a sampling of the type of  
9 things, the type of benefits, that have been  
10 provided to Mr. Armenta and Montoya, the stabbers;  
11 Mr. Rodriguez. Cash, cash money, thousands,  
12 thousands of dollars to the witnesses and their  
13 family members. Better access, better conditions of  
14 confinement, including access to things like better  
15 food. It may not seem like a big deal to you or me,  
16 but if you're living in Unit 1-A, B pod, or in some  
17 other restrictive prison environment in the state of  
18 New Mexico, you can bet that you appreciate that.  
19 Access to cellphones while in custody. Internet  
20 access; ability to open an email account, chat with  
21 people. Government witnesses were provided more  
22 visits and contact visits with their family members.  
23 Help getting housing when they're released from  
24 prison. Promises of future employment as government  
25 agents. Pornography. Help getting speeding tickets



1 or traffic tickets fixed. And escape from  
2 consequences of other criminal behavior.

3 A trial is supposed to be a search for the  
4 truth, and in the search for the truth, the  
5 Government is going to bring you this parade, this  
6 parade of bought-and-paid-for criminals. And you'll  
7 be able to consider or look at the evidence and ask  
8 yourself whether these people are corroborated,  
9 whether there are things that make their stories  
10 true. The evidence is going to show you that on  
11 many important points there is a complete lack of  
12 corroboration.

13 Let me just say something before we go --  
14 before I finish up, because I want to just make an  
15 important point. The defense in this case is going  
16 to be established really in two ways. One is  
17 through the cross-examination of the Government's  
18 witnesses. Once the Government presents the  
19 witness' testimony, we have a chance to ask them  
20 questions. And the other is through the  
21 presentation of our own witnesses if we have things  
22 we want to present to you by the time that the  
23 Government is done with their case.

24 It's not always going to be obvious, as  
25 the evidence is presented, what the point is. I'll

1 just tell you that right now. Hopefully, it will be  
2 some of the time, but not all the time. And that's  
3 just the nature of a trial. And I think that you're  
4 going to have to maybe wait to understand the  
5 importance of particular details and exactly why a  
6 particular witness lacks credibility or lacks  
7 reliability. But as Ms. Armijo said, we all get a  
8 chance to talk to you again at the end of the trial  
9 about what the evidence has shown and try to link up  
10 some of the things that maybe aren't so obvious as  
11 they're presented.

12 I think in spite of the Government's  
13 efforts -- or I should say in spite of the  
14 Government's witnesses' effort to mislead you about  
15 the truth of the situation in order to avoid the  
16 full consequences of their criminal behavior and in  
17 order to gain and continue to gain Government  
18 benefits, I think the evidence in this case will  
19 show you the truth about the charges against Mr.  
20 Sanchez. And the truth is, there was no paperwork  
21 sent to Southern New Mexico Correctional Facility on  
22 March 6, 2014. And the truth is, Mr. Sanchez didn't  
23 order anybody to kill Mr. Molina. And the truth is,  
24 the killers, the criminals, the Government is going  
25 to call as their witnesses -- the truth is, the

1 evidence is going to show you they lack credibility.  
2 And the evidence will lead you to the truth, that  
3 Mr. Sanchez is not guilty.

4 THE COURT: Thank you, Ms. Jacks.

5 Ms. Bhalla, do you have an opening  
6 statement for Mr. Herrera?

7 MS. BHALLA: Yes, Your Honor. Thank you.

8 THE COURT: Ms. Bhalla.

9 MS. BHALLA: Good morning.

10 Carlos Herrera was born and raised in  
11 Albuquerque, New Mexico. And as a young man, he  
12 made mistakes, and we're not going to deny that.  
13 And he's paying for those mistakes and he's been  
14 paying for those mistakes. And part of the way he's  
15 paying for those mistakes is that he's serving time  
16 in prison. We're not going to deny that.

17 And when Mr. Herrera entered prison as a  
18 young man, he joined a gang, like a lot of people  
19 do, for protection. And you're going to hear a lot  
20 about that during this trial, about why people join  
21 gangs and about gang culture and prison culture and  
22 how that all works.

23 And part of that means using drugs. But  
24 we're not going to ask you to decide whether or not  
25 Mr. Herrera was a gang member or a drug user,

1 because he is. What we're going to ask you to  
2 decide is whether or not the Government is going to  
3 put on enough evidence to show you that he's guilty  
4 of killing Javier Molina and whether or not he's  
5 guilty of conspiring to murder Javier Molina. And  
6 we're going to submit to you that they're not going  
7 to give you that proof, because it's not true.

8 I want to talk to you a little bit about  
9 the murder of Javier Molina. Ms. Jacks did a good  
10 job showing you a picture of the blue pod.

11 I don't know if somebody can bring that  
12 back up for me, please.

13 But what I want to show you for that --  
14 and I'm sorry, I didn't prepare her to show me this  
15 picture -- that's the blue pod. This is where the  
16 murder occurs. Carlos Herrera is not in the blue  
17 pod. He doesn't live there. He lives in the yellow  
18 pod.

19 And I think if you go to the next slide,  
20 you can see the door that separates the two pods.  
21 That's the door. There is no window. That's the  
22 blue pod, and it separates the yellow pod.

23 How -- I'm going to ask you to think about  
24 that when you hear these witnesses' testimony --  
25 were these inmates communicating with each other

1 through these pods? How would Carlos Herrera have  
2 any control over what happened in the blue pod?

3 And that's something else you're going to  
4 hear about. You're going to hear a lot about prison  
5 culture, gang culture, but you're also going to hear  
6 that each pod is its own unit, its own entity, it  
7 has its own social structure, and different people  
8 are looked up to and respected. Different people  
9 are known and different people have been around.

10 And interestingly enough, the evidence is  
11 going to show you that Mr. Herrera had been in the  
12 yellow pod for a pretty long time before the Molina  
13 murder. And Ms. Armijo told you that the hit had  
14 been outstanding for a long time. It didn't happen  
15 for the whole amount of time that Mr. Herrera was  
16 next door in the yellow pod. And Ms. Armijo also  
17 told you that the leaders got shipped out to PNM  
18 North. Mr. Herrera never got shipped out to PNM  
19 North.

20 The Government may show you a video of the  
21 murder in blue pod. Carlos Herrera is not in that  
22 video. The people you're going to see in that video  
23 are the people the Government has made deals with,  
24 like Ms. Jacks told you: Mr. Armenta, Mr. Montoya,  
25 and Mr. Rodriguez.

1 Ms. Armijo also told you about the  
2 Santistevan plots and the Marcantel plots. And  
3 you're not going to hear any evidence that Carlos  
4 was involved in that or had anything to do with it,  
5 and he's not charged with any conduct related to  
6 that. I'm going to ask you to keep that separate  
7 from Mr. Herrera and from our case.

8 But it shows you why the Government got  
9 involved, and why they wanted to take out SNM, and  
10 why they started working with these people. And it  
11 became a situation where they were going to use any  
12 means necessary to do what they needed to do to  
13 eradicate the SNM. And the easiest people to go  
14 after are the people who they can prove did the  
15 murders. So their cover is blown; right? Jerry  
16 Armenta, Jerry Montoya, Mario Rodriguez are on the  
17 video. What do they get out of it if they say, "Oh,  
18 yeah, I did it"? They're not going to get a break.  
19 The only way they get a break is if they help the  
20 Government get the convictions of everybody they can  
21 possibly bring into this net. And they cast a wide  
22 net, and they start applying pressure. And you're  
23 going to hear evidence that some of these witnesses  
24 were threatened with the death penalty, and their  
25 family members were threatened with prosecutions.

1 People who weren't even in the prison.

2 And the pressure builds. And the  
3 incentives to cooperate become impossible to refuse.  
4 The more people you implicate, the better your deal.  
5 The more SNM members you get to flip, that you get  
6 to cooperate, that you get to become part of our  
7 case, the better your deal.

8 And that's why they all got moved  
9 together, once they agreed to cooperate, to what the  
10 Government has termed the cooperator pod, where they  
11 all get to talk, where they all get to share  
12 discovery. They have the discovery on their  
13 tablets. They get the chance to talk to each other  
14 about their stories, about what stories they're  
15 going to tell, and about how they're going to help  
16 the Government prove their case. And they get  
17 rewarded for it. They get rewarded for it.

18 Every single word that comes out of these  
19 witnesses' mouths either seals their fate or  
20 delivers their salvation. And I submit to you that  
21 that's tainted testimony. And there is nothing,  
22 outside of these Government witnesses, to  
23 corroborate their testimony.

24 And I'm going to urge you to keep that in  
25 mind when you listen to the evidence and when you

1 make decisions about assessing credibility and when  
2 you make decisions about who is telling the truth in  
3 this case. And at the end of the evidence, you will  
4 find that Mr. Herrera is not guilty.

5 Thank you, Your Honor.

6 THE COURT: Thank you, Ms. Bhalla.

7 Ms. Fox-Young, do you have an opening  
8 statement for Mr. Perez?

9 MS. FOX-YOUNG: Yes, Your Honor.

10 THE COURT: Ms. Fox-Young.

11 MS. FOX-YOUNG: May it please the Court,  
12 ladies and gentlemen. Rudy Perez was sick in bed in  
13 March of 2014 when Javier Molina died. He was  
14 almost always in bed in early 2014 and that's  
15 because he was very sick at that time. He had had  
16 many injuries over the years, and for the better  
17 part of a year prior to that spring, he had spent  
18 several months in the hospital at the University of  
19 New Mexico in Albuquerque. He had had an  
20 eight-day -- at least eight-day debilitating  
21 seizure. He had no memory. He had spent -- after  
22 he was released from the hospital, where he  
23 originally was because of a very bad intestinal  
24 problem and very nearly died, he spent the better  
25 part of the year in a prison hospital in Los Lunas.



1           And so in March of 2014, when he was  
2   housed at Southern New Mexico Correctional  
3   Facility -- and you've seen an image of that -- it  
4   was actually remarkable that he was still alive.  
5   And he spent most of his time in bed. He was taking  
6   a number of medications. He was taking medications  
7   for seizures, he was taking medications for pain, he  
8   was taking medications to sleep. And all those  
9   medications had a great effect on him. And you  
10   don't have to take this from me. You're going to  
11   hear evidence in this case from a number of people  
12   who treated Mr. Perez and who have reviewed his  
13   records. But that's the condition that he was in at  
14   this time. It was remarkable that he was alive, and  
15   he was trying to stay alive; he was trying to  
16   survive.

17           He also had a very difficult time getting  
18   around, and he had a walker. Ms. Jacks showed you  
19   some photos of that area called blue pod. And  
20   you'll see these all again. But she showed what it  
21   looked like when you entered a cell. And there is  
22   an area where prisoners or inmates could hang their  
23   clothing and keep their possessions, right there at  
24   the front door. And there is a little laundry  
25   hamper that's built into the wall.

1           In Mr. Perez' cell, there was no hamper.  
2   That's what they termed the handicapped cell at that  
3   time. The prison officials cut that metal hamper  
4   out, and that's where Mr. Perez's walker would sit.  
5   He couldn't go out -- he really didn't go outside  
6   much. He didn't leave his cell much. But when he  
7   needed to move around, he had to use that walker.  
8   He relied on it completely. And you'll hear about  
9   that.

10           Today Rudy is 49 years old, and he's been  
11   through a lot. The prosecutor told that you he's a  
12   veteran member of the SNM. He's been in prison a  
13   long time. You won't hear any evidence that he's a  
14   leader. You won't hear any evidence that he was  
15   ever moved out of state. You won't hear any  
16   evidence that he held keys in a pod. You won't hear  
17   evidence that he called out hits.

18           He's been in prison a long time. And his  
19   biggest concern, particularly given his physical  
20   condition, his physical weakness, and his various  
21   medical issues that he fights day-to-day, has been  
22   staying alive.

23           You all agreed over the past couple of  
24   days to look at each of these men individually, and  
25   you'll recall that. I need you to look at Rudy

1 Perez individually, and I'll tell you he is not  
2 charged with any of these events involving Mr.  
3 Marcantel, Mr. Santistevan. So you're looking at  
4 the Molina case when you look at Mr. Perez. And  
5 he's charged with conspiracy to murder and murder of  
6 Javier Molina.

7 So the rest of this stuff -- and this is  
8 going to be a pretty long trial. All this evidence  
9 that you hear about folks being moved out of state  
10 and negotiation with the Department of Corrections  
11 and this long saga regarding the gang and hits on  
12 officials -- that has nothing to do with Rudy Perez.

13 The only evidence that you will hear from  
14 the Government from inside Rudy's cell on March 7,  
15 2014, which is the day that Javier Molina was  
16 stabbed by Jerry Armenta and Jerry Montoya, is going  
17 to come from one of the killers themselves. That  
18 supervisor that Ms. Jacks told you about, Mario  
19 Rodriguez.

20 Mario Rodriguez is going to tell you that  
21 on March 7, 2014, he saw Mr. Sanchez go in and out  
22 of Mr. Perez' cell, Rudy's cell, didn't hear what  
23 happened; and that he himself went into Rudy's cell,  
24 and that Rudy looked scared. He's going to tell you  
25 that. He's going to tell you not that Rudy gave him

1 a piece to use to kill anybody, but that he himself  
2 took a piece off Rudy's walker, which I told you  
3 Rudy needed to get around; and that he removed it,  
4 that he put it in his pants, and that he returned to  
5 his own cell to make shanks out of that piece for a  
6 murder.

7 Nobody else was in that cell when this  
8 happened. You're not going to see video from the  
9 Government as to what happened in there, although  
10 Ms. Jacks told you that they had that capability.  
11 Nobody was there except for Rudy and Mario  
12 Rodriguez, and Mario Rodriguez is going to tell you  
13 that Rudy was scared. He's also going to tell you  
14 that Rudy said that he was down for whatever, as  
15 long as it wasn't him. He didn't know if this was  
16 going to be used on him. And it was clear to Mario  
17 Rodriguez -- and you'll be able to deduce this from  
18 the evidence -- that Rudy just didn't want to get  
19 hurt. He's going to tell you he looked scared. And  
20 ladies and gentlemen, that's not somebody who is  
21 making an agreement. That's not somebody -- Rudy  
22 was not somebody who wanted to help kill another  
23 person; not somebody who intended to carry out a  
24 murder, to assist in carrying out a murder, or to  
25 send a message. Rudy was just trying to stay alive.

1           So this is the story that the Government  
2 is going to offer you. And as Ms. Jacks explained,  
3 you will see the defense counsel cross-examining  
4 witnesses. When we ask questions of the  
5 Government's witnesses, we're putting on our case as  
6 well, so pay close attention to what we ask and how  
7 those questions are answered. You're going to hear  
8 that from Mario Rodriguez.

9           You will also hear from the Government's  
10 witnesses who investigated after Javier Molina died  
11 that Rudy had been threatened and that he would have  
12 been killed if he had tried to stop this from  
13 happening. When Mario Rodriguez came in and took  
14 that piece, if Rudy had said no, he would have met  
15 the same fate as Javier Molina.

16           And that's life in prison. You're going  
17 to hear a lot about that, and you're going to hear  
18 about a prison gang. But that was Rudy's reality on  
19 that day: If you get in the way, you're next.

20           Rudy had no choice in that he could not  
21 physically defend himself. He was sick, and he was  
22 physically incapable of taking this on. So Mario  
23 took the piece, and you will hear from him and from  
24 others that he then left and went with Tim Martinez,  
25 another Government witness, one of the killers, to

1 Javier Molina's cell to get high. The evidence will  
2 show you that Tim Martinez choked Javier Molina in  
3 an attempt to incapacitate him, and that he was then  
4 stabbed by Jerry Montoya and Jerry Armenta over 40  
5 times, many times to the heart. Jerry Montoya got  
6 on top of Javier Molina and he stabbed him. He  
7 then, upon completing the stabbing, threw his shank  
8 to Mario Rodriguez, the same guy who went into  
9 Rudy's cell, and Mario stuffed it down the shower  
10 drain and turned the water on.

11 When all this was happening -- and you're  
12 going to hear about this multiple times -- Rudy was  
13 in his cell in bed. You're going to hear evidence  
14 from other Government witnesses explaining that.

15 After Javier Molina died, everyone in this  
16 area of the prison -- and keep in mind, these guys  
17 don't get to say where they're going to be housed;  
18 they're put together -- they all got moved to  
19 various places. Many of them got moved up to Santa  
20 Fe. And they were held in segregation for a long  
21 time in solitary confinement. You think the  
22 conditions in blue pod were austere? In solitary  
23 confinement, with no natural light, kind of like  
24 this courtroom, and very little time in recreation,  
25 very limited social interaction, very dulling to the

1 senses. You will hear from witnesses, killers,  
2 other Government witnesses about the mental,  
3 emotional, and other effects, the kind of paranoia  
4 that sets in when you're in segregation for long  
5 periods of time.

6 And so Rudy was transferred. And he was  
7 held in segregation something on the order of two  
8 years for doing nothing. And so when the  
9 Government -- so when the prosecutor tells you that  
10 these guys weren't happy about it, that's true.  
11 Rudy wasn't happy about being held in solitary  
12 confinement for two years for doing nothing.

13 The way it worked -- and you're going to  
14 hear evidence about exactly where each of these  
15 individuals was held. Up at this facility in Santa  
16 Fe, the folks who had been moved from Southern,  
17 including Rudy, were able to communicate. They  
18 could communicate through the vents in the cells,  
19 and occasionally the guys who were allowed to go to  
20 rec could communicate, they could send messages,  
21 called kites, to one another.

22 And so rumors were swirling. Javier  
23 Molina had died. Nobody knew exactly, in the  
24 beginning, who was going to be charged, what the  
25 investigation was showing, and there was a lot of

1 gossip. There were a lot of rumors about what had  
2 happened and what was known. And that is where Rudy  
3 learned what other people said happened. And you'll  
4 see this. You'll be able to see where people were  
5 housed and who could talk to each other.

6 And so months went by and Rudy learned  
7 about the details of an agreement, an agreement he  
8 wasn't part of.

9 After a number of months, in about  
10 November of 2015 -- so the murder was in March of  
11 2014 -- a number of people were, in fact, charged,  
12 including the killers, who you will hear from in  
13 this trial: Montoya, Armenta, Rodriguez. And  
14 because Rudy himself wasn't charged, all these guys  
15 started spreading rumors that he was working with  
16 the Government, that he was a rat. They knew that  
17 the Government thought the murder weapons, the  
18 pieces that were used, that Mario Rodriguez took --  
19 or may have taken; they didn't know -- came from  
20 Rudy's walker, so they figured, this guy is a rat;  
21 this information is coming from him. That's why he  
22 hasn't been charged.

23 A number of people made statements after  
24 the murder and up until this time. Nobody ever  
25 implicated Rudy, but the Government had the theory



1 that this came from Rudy. And so everybody thought  
2 this had to be how they knew it.

3 So after those individuals are charged, in  
4 November of 2015, several weeks go by and Bryan  
5 Acee, who you will hear from, from the FBI, went to  
6 see a man named Billy Cordova. And you're going to  
7 hear from Billy Cordova. He went to see him in  
8 Albuquerque, and he threatened to charge him with  
9 racketeering. He threatened to charge him with a  
10 number of crimes. And you will hear about his  
11 criminal history.

12 Mr. Cordova, Billy Cordova, of course,  
13 knew all the same rumors and the same theories. He  
14 knew that everybody thought Rudy was a rat, and he  
15 knew that he could take advantage of that and try to  
16 make a deal for himself by capitalizing on Rudy's  
17 fears.

18 And so he talked to Mr. Acee and he made a  
19 decision to save his own hide and to try to get  
20 information. And so the Government worked together,  
21 and they were actually able to make arrangements to  
22 put Mr. Cordova next to Rudy in segregation, where  
23 Rudy had been for many months, where Rudy was alone,  
24 paranoid, scared, hearing all these rumors. So he  
25 puts him right next door. You'll see pictures of

1 these cells and the way they were able to  
2 communicate.

3           During this time period, Rudy could only  
4 talk to Billy Cordova. He was isolated. He could  
5 talk to him through the vent. And so knowing that  
6 Billy Cordova had a big mouth, which he had a  
7 reputation for, and knowing that everybody thought  
8 Rudy was a rat, that he was in danger, he tells  
9 Cordova all this stuff he's heard. He takes credit  
10 for knowing all this information. And he does do  
11 more than that. You heard -- the prosecutor told  
12 you that Rudy said nobody deserves a free pass on a  
13 violation, and that everybody has to do their part.  
14 That's when Rudy said these things. He said them to  
15 Mr. Cordova because he was trying to save himself.  
16 He was puffing. And you're going to hear a lot  
17 about how people in prison take credit for things  
18 that they didn't do. They do it to survive. So  
19 that's exactly what was happening with Mr. Cordova  
20 in the cell next to Rudy.

21           And like many of these other murderers,  
22 who you will hear from, one after another in this  
23 case, when the Government puts them on the stand,  
24 Billy Cordova had everything to gain, and he had to  
25 exploit Rudy in order to serve up some information

1 to the Government so he himself could avoid  
2 something on the order of a life sentence.

3 So you're going to hear a lot from the  
4 other killers in this case. They all had everything  
5 to gain. They'll say anything to get a deal, get  
6 out on the streets. So with every single one of  
7 them, keep in mind that their lives depend on their  
8 performance in this case. They have incentives to  
9 say anything in order to get a deal.

10 So I'd just like to remind you that over  
11 the last two days, we all sat here and you agreed  
12 that you could judge the facts of Rudy's case  
13 individually, and that's what you have to do. At  
14 the end of this trial, you're going to decide that  
15 there isn't evidence to find that Rudy agreed to  
16 anything, that he committed these crimes; and we'll  
17 ask you to find him not guilty. Thank you.

18 THE COURT: Thank you, Ms. Fox-Young.

19 Mr. Lowry, do you have an opening  
20 statement for Mr. Baca?

21 MR. LOWRY: I do, Your Honor.

22 THE COURT: Mr. Lowry.

23 MR. LOWRY: May it please the Court.

24 THE COURT: Mr. Lowry.

25 MR. LOWRY: If it's not recorded, it

1 didn't happen. And that's a really important thing  
2 you need to consider in this case: That when the  
3 evidence hasn't been recorded, it hasn't happened.  
4 That's a key component that you need to consider  
5 when you listen to the evidence in this case.  
6 Because once you carve out the law enforcement  
7 officers, who you will hear testify, you'll find  
8 that almost the entirety of this case rests upon the  
9 shoulders of men who are murderers, thieves, drug  
10 dealers, and wife-beaters. And as you've heard  
11 everybody say, the credibility of these people  
12 leaves something to be desired.

13 All of the people you will hear from in  
14 this case -- they either want to get out of prison  
15 or they don't want to go in. And there is a reason  
16 we referred to these folks as con men, because they  
17 know how to make the system work on their behalf.  
18 And they know that in order to get out the prison  
19 door or to avoid walking in it, they need to have a  
20 compelling story to avoid the consequences of their  
21 actions.

22 What Mr. Baca, Ms. Duncan, and I are going  
23 to ask you to do throughout this trial is to listen  
24 carefully to the evidence and watch these witnesses  
25 testify, like we talked about in voir dire

1 yesterday, and pay attention. Look at body  
2 language, look at their demeanor, and decide for  
3 yourselves. Did it happen like they say? Is there  
4 any evidence to corroborate what they're saying?

5 Now, we've talked about these cooperating  
6 witnesses in generalities, but I want to talk about  
7 one in specific, and you're going to hear from one  
8 of the key witnesses in this case, a gentleman named  
9 Eric Duran. And Eric Duran is a life-long criminal.  
10 He went to prison in 1998 for evading arrest,  
11 aggravated battery on a police officer. He actually  
12 stole a police car, and the police officer had his  
13 pistol drawn, trying to get him to stop, and he  
14 wouldn't stop, and he fled. And he was arrested and  
15 put in prison.

16 And while he was in prison, something  
17 strange happened. Not strange, but unfortunately,  
18 odd. You heard from Ms. Jacks, there are plenty of  
19 people in the prison system that lack a moral  
20 compass. Unfortunately, you even heard from Ms.  
21 Armijo that sometimes the people that lack the moral  
22 compass are the actual prison guards. They have to  
23 watch the prison guards just as much as the inmates  
24 to keep them from couriering in drugs. But when  
25 Mr. Duran was in prison for aggravated battery on a

1 police officer, he had an incident one day where the  
2 prison guards cuffed him behind his back, placed him  
3 on the floor, and kicked his head in repeatedly.

4 So Mr. Duran knew that prison life is  
5 violent. He knew that prison life is corrupt. And  
6 he knew the prison life just isn't safe.

7 So he got out after that event, but it was  
8 short-lived. He was out for less than a year, and  
9 then he committed a murder and he went back to  
10 prison in 2005 for second-degree murder and he was  
11 ordered to spend 15 years in the prison system.  
12 You've seen the pictures. It's not a glamorous  
13 place. And Mr. Duran sat there year after year  
14 after year, and he was in prison and he wanted  
15 nothing more than to get out.

16 Now, Mr. Duran was worried about his own  
17 safety. While he was sitting there in a prison  
18 cell, he fashioned himself a steel shank, a rod of  
19 metal, sharpened at the end, to protect himself.  
20 But unfortunately, the guards found it in 2013. And  
21 because he had a not-so-glamorous history with his  
22 prison discipline, he was actually criminally  
23 prosecuted for holding that shank. And he went to  
24 court and was guilty, yet again, of another crime.  
25 And the judge put a year on top of the 15-year

1 sentence he already had. And that happened in 2014.

2 Now, he was tired of living in prison.

3 It's not fun. It's not safe. And in the fall of  
4 2014, he actually filed a civil lawsuit against the  
5 Department of Corrections. And he complained  
6 bitterly about the conditions he was living under.

7 He complained about the lack of phone calls. He  
8 complained about the lack of basic human  
9 necessities, like showers. He complained about the  
10 inability to get out of his cell and get recreation  
11 time. And he was furious about it. And in his  
12 civil lawsuit he described these deplorable  
13 conditions as horrendous, in his own handwriting.

14 They are horrendous. And at this time he's  
15 living -- in the end of 2014, the beginning of 2015,  
16 he's living in the most secure portion of the  
17 facility, Level 6, in Santa Fe at PNM. The most  
18 austere conditions, the least amount of liberty, and  
19 he's stuck. His civil case is going nowhere and he  
20 wants to get out.

21 And then the guards come back in early  
22 February, February 13, and they shake down his cell  
23 because they're concerned about him. He's had  
24 shanks. They know he's not a nice guy. And they  
25 find another shank. And at this point, Mr. Duran is

1 thinking to himself: Here we go again. I don't  
2 want to do another year on top of my 15 years on top  
3 of the year. I want to get out.

4 Later that week, the prison staff comes by  
5 and they shake down all their cells because they're  
6 finding too many weapons in that portion of the  
7 facility, and they take his property. And when they  
8 take his property, he screams at the guard  
9 obscenities I won't share with you, and he threatens  
10 this guard with a very pointed threat. "I know  
11 where you live," and he tells him his address. "I  
12 know what car you drive." He reads him the license  
13 plate to his car. And he says, "I'm going to get  
14 you."

15 Now, the guard wrote him up, like he  
16 should. And at this point Mr. Duran knows, "Wow, my  
17 goose is cooked."

18 The very next day he goes to the FBI  
19 office in Santa Fe. They don't want to know about  
20 the threat to the guard. They don't want to know  
21 about the shank. They want to talk to him about  
22 what he can barter with them to avoid the  
23 consequences of his behavior. And he wanted to be  
24 there. No doubt about it. I mean, he saw it. My  
25 plan A didn't work; my civil case has sputtered out.



1 I'm still stuck here. I need to do something. I  
2 need to do something fast.

3 But what you'll hear when he takes the  
4 stand and the testimony in this case is, even though  
5 he knows that's his shot to get out, this interview  
6 starts with a question to Mr. Duran, and the FBI  
7 asked him something very simple, very clear, pretty  
8 binary. "Are you a member of the SNM?"

9 And he tells the FBI a big fat lie. He  
10 goes, "No, I've never really been a member of the  
11 SNM. I don't know what you're talking about."

12 And they're scratching their heads.  
13 They're going, like, "Wow, why is he here? We  
14 thought we were investigating prison gang guys."

15 Then they asked him a second question.  
16 They said, "Well, what's your motivation for coming  
17 here?"

18 And he tells them something to the effect  
19 of, "I just want to give back to the community. I  
20 want to rehabilitate myself and give back to my  
21 community, and I want to help you solve all kinds of  
22 crimes. And if you could just get me out of here, I  
23 could be a great undercover agent, because I know  
24 all these dope dealers because after the  
25 correctional officers kicked my head in, I made a

1 lot of money."

2 Do you know what Mr. Duran did with that  
3 money? He bought and sold, in his words, kilos of  
4 cocaine. So he told them he'd be happy to work with  
5 them. He could do whatever they wanted him to do.  
6 He was a team player. He was ready to play ball.

7 And even though they had to have known  
8 that he was lying to them, they signed him up. They  
9 said, "Sounds like a deal." And they put Mr. Duran  
10 back in prison to cooperate with them, to get  
11 information.

12 But Eric Duran wasn't worried about just  
13 gathering information. He needed to create  
14 information to make sure the doors to that facility  
15 opened, to make sure that he could get out. And  
16 that's a date I want you to think about and remember  
17 throughout this case: February 19, 2015.

18 Now, all of those things I'm talking  
19 about, they're all recorded. They happened. The  
20 three guards that kicked his head in? They got  
21 convicted. They went to prison. That happened.  
22 There is a record of that.

23 The shank they found in his cell? That  
24 happened. There is a record of that. He got it  
25 right.

1           The yelling at the guard? He got  
2 disciplinary action for that. There is a record.  
3 It's there. You can read it.

4           But what happens next is, Mr. Duran does  
5 the bidding of the Government. He collects  
6 evidence. They give him a cell phone, they put on a  
7 body wire, an electronic surveillance device, so he  
8 can record anybody in the prison he wants to record,  
9 and only he decides when to cut it on and when to  
10 cut it off. He gets to decide who to record and  
11 when to record. And over the course of that year,  
12 2015, through March, April, May, June, up through  
13 October, he records all kinds of people. But he's a  
14 Wile E. Coyote. He knows how to butter people up.  
15 And after he butters them up, he cuts on the  
16 recorder.

17           Now, in exchange for all his work, his  
18 plan B, to cooperate with the FBI, worked out like a  
19 charm. Because after my client -- after Mr. Baca  
20 was indicted in this case with his co-defendants  
21 that are here in the courtroom, on December 3, 2015,  
22 the benefits really started to come in.

23           You see, throughout that summer he got  
24 little trinkets; he got commissary money; they gave  
25 his girlfriend money to help with her kids. But

1 after December 3rd, the money started rolling in.  
2 Not by the hundreds; by the thousands. And the  
3 Department of Corrections patted him on the back and  
4 said, "You were so helpful for us, we're going to  
5 let you go. We're going to cut your prison sentence  
6 and we're going to let you free early." And that's  
7 exactly what Mr. Duran wanted, and he got it.

8 Let's come back to what he told the FBI on  
9 February 20, 2015. What did he do with his  
10 new-found freedom? Did he give back to the  
11 community? No. During early spring, summer -- I  
12 believe it's 2017, because he gets out in 2016 --  
13 the FBI has helped him out with relocating him to  
14 Vancouver, Washington, a new place to live. And  
15 they set him up as being an undercover agent there,  
16 so he could continue to dabble in his drug world and  
17 pull people in for prosecution.

18 But that wasn't quite good enough for  
19 Mr. Duran, because the reality of it was: He wasn't  
20 really a good guy. He couldn't give up the life.  
21 And what you'll see and what's recorded and what you  
22 can put your hands on is, during 2017, he gets  
23 investigated by Child Protective Services because  
24 his stepdaughter complained that he smacked her so  
25 hard on the cheek her tooth became loose. And when

1 she told that to the teacher, they investigated him.

2 And it still amazes me that when they did  
3 the investigation of him then, the folks in  
4 Washington state found out that he had an  
5 outstanding robbery charge in El Paso for an old  
6 robbery that he had committed using a different  
7 name.

8 Now, because he was working so generously  
9 with your government, calls were made and the  
10 prosecutors down in El Paso decided, "Hey, we're  
11 going to drop that charge. No biggie. We're going  
12 to let it go." Great investment. Great job if you  
13 can get it.

14 But later that year, in 2017, while the  
15 police in Washington are scouting out a hotel where  
16 prostitution is taking place, Mr. Duran pulls up to  
17 the hotel with a prostitute in his car who hops out  
18 and enters the hotel. And when the police converge  
19 on his car to say, "Oh, we've got somebody else;  
20 this is part of our sting operation," Mr. Duran was  
21 in the car with a syringe full of a fluid. But the  
22 police never got to figure out what the fluid was,  
23 because he sprayed it all over the floorboard of the  
24 car. And once again he confronted the police and  
25 said, "Hey, hey, I'm with the FBI. I'm undercover."

1 And they said, "You know, that's all  
2 right, you're one of us. Just don't do it again.  
3 It's really not good to hang out with prostitutes.  
4 You're on parole for all your crimes in New Mexico.  
5 What are you doing? And why do you have a syringe?"

6 But what happens to Mr. Duran? Nothing.  
7 A pat on the back, "Don't do it again."

8 Now, the folks -- and you can see these  
9 records. They're there. They're contemporaneously  
10 made. You can hold them in your hand. You can read  
11 them.

12 Now, he goes on a couple weeks later --  
13 this is November 11, 2017. The police get a call.  
14 There are two guys passed out in the car. And the  
15 police report, they follow up, and they look inside  
16 this car, and they're, like, "Hmmm. This is odd.  
17 These guys are passed out in this car. They don't  
18 answer when we knock on the door. They're really  
19 sound asleep."

20 But when they look inside, they see a  
21 pistol. And at this point you're a police officer,  
22 that's cause for concern. So they call for backup.  
23 They get their reserves there, they get everybody in  
24 place, and still they're blaring horns, they can't  
25 get these guys to wake up. And they finally wake

1 up, and they say, "Put your hands up."

2 What does Mr. Duran do? He slides down in  
3 his seat. And they're really worried, because he's  
4 disappearing before their eyes. And they're trying  
5 to figure out, what's he doing? What's he doing?  
6 And he's hiding the pistol that he had with his feet  
7 beneath the seat, hoping, praying that the police  
8 don't find it. But they're good law enforcement  
9 officers, and they find it and they arrest him.

10 And he gets charged, because the police  
11 officers don't know and he doesn't tell them that  
12 he's working with the FBI. But calls were made and,  
13 lo and behold, the charges disappeared. The other  
14 guy in the car gets tried and convicted, but not  
15 Mr. Duran. He gets to go free.

16 Now, a couple of weeks later, he's a  
17 passenger in a stolen car. And the car takes off  
18 like a bat out of hell, and the police have to chase  
19 him in hot pursuit. And when the driver of the car  
20 wrecks the car, they get out of the car and flee.  
21 Now, does that sound like somebody that wants to  
22 give back to the community? And when they found  
23 him, still nothing happened.

24 Now, our federal government wouldn't do  
25 anything, but the New Mexico Parole Division finally

1 had enough and they were, like, "One of our parolees  
2 who can't behave -- we've got to reel him back in,"  
3 and they issued a warrant for his arrest.

4 But nobody had him. He was still free.  
5 But finally, the next time the police found  
6 Mr. Duran passed out in a different car in front of  
7 a convenience store and they knocked on the window,  
8 Mr. Duran knew he hadn't reported for parole. He  
9 knew he'd been arrested for not only the pistol in  
10 that car, but he actually had a handful of heroin,  
11 too, and he knew he was in deep trouble.

12 So when the police knocked on the car  
13 window the next time, he gave them a fake name and  
14 tried to pretend like he was being harassed by the  
15 police and pretended like he was calling his  
16 attorney because he was being badgered by law  
17 enforcement officers. And he wouldn't tell them who  
18 he was. And they knew; they were smart police  
19 officers. They knew something was up. So they had  
20 to have, you know, an electronic gizmo to come up --  
21 they could run his fingerprints right there in the  
22 parking lot, so they could find out who he was;  
23 because he wouldn't tell them. And they found out  
24 who he was. They found out he had an arrest  
25 warrant, and finally Mr. Duran was arrested and



1 brought back to New Mexico.

2 Now, I tell you that because every bit of  
3 that information was really recorded. You can put  
4 your hands on it. But Mr. Duran will tell you  
5 stories that you cannot corroborate, just like the  
6 police officer who doesn't believe his fictitious  
7 name and has to roll his fingerprints on a  
8 newfangled gizmo to find the truth. And that's a  
9 pretty heavy burden, and that's what we're going to  
10 ask you, the jury, to be the newfangled gizmo. Is  
11 he telling the truth? And that's what we'll spend  
12 the next weeks doing.

13 Now, I tell you that just because it's not  
14 going to be an easy task to separate what's really  
15 the truth here. But I have a good idea.

16 But that's enough about Mr. Duran. I want  
17 to tell you a little bit about Mr. Baca, our client.  
18 We represent Mr. Baca, and we're happy to do that.  
19 But Mr. Baca hasn't had the most glamorous life  
20 either. He's lived for decades in the New Mexico  
21 Department of Corrections. He went in as a very  
22 young man, and we're not here to pull any strings.  
23 You know, he joined a prison gang as a very young  
24 man. Because you heard the story about Mr. Duran.  
25 It's not a glamorous life. He joined the SNM. He

1 got tattooed. And you'll probably see pictures of  
2 his tattoos here in a couple of minutes. But he has  
3 "Syndicato de Nuevo Mexico" tattooed on his stomach.

4 But at the time, as my colleagues have  
5 explained, everybody has their own community. And  
6 when you live out in the free world, you can pick  
7 your community. You can pick your community. You  
8 can actually create your community, you know; and  
9 you can say, "I want to be a mountain biker," or, "I  
10 want to be an astronaut." But when you're in  
11 prison, your options are limited, and it comes down  
12 to developing a community inside those walls of the  
13 institution.

14 Now, Mr. Baca didn't always get along with  
15 the prison administration. They shipped him out of  
16 state for a long period of time. From about 1998 to  
17 2008, he lived in Nevada.

18 And I just want to back up for a second,  
19 because, I mean, it's important to understand. It  
20 might not be our culture, it might not be your  
21 culture. But you know, he needed the protection and  
22 the bonds of friendship that that gang had to offer.  
23 And over the years, like any village elder, he just  
24 became somebody who knew the ropes, and people  
25 looked up to him and went to him for advice. How do

1 you survive? What do you do in here to make it  
2 through the day?

3 So prison he doesn't really get along  
4 with, and they ship him out of state, and he comes  
5 back in 2008. And all of that -- there are records.  
6 You can hold them. It really happened.

7 Then when he comes back to New Mexico in  
8 2008, you know, things change. Like the rest of us  
9 in our real lives, things change over a decade. And  
10 his old associations at SNM weren't really a  
11 big-time thing anymore. It wasn't even a unified  
12 gang. And even the Government agents will tell that  
13 you it was fractured. There were factions. There  
14 was infighting. There was no unification. It was  
15 in disarray, for lack of a better term. And because  
16 he was older and because that's his community he  
17 thought, I'm going to do what I can to see if I can  
18 bring some structure, some organization, and some  
19 bonds of unity within my community.

20 Now, it's an odd community. It's not your  
21 community; it's not my community. It's a prison  
22 community. But nobody wants to have their head  
23 kicked in by a bunch of COs for no reason.

24 But here's the thing: He wasn't the man  
25 for the time. Nobody really went along with his

1 ideas. And at this point in time, he's living in  
2 the Southern New Mexico Correctional Facility, which  
3 is right outside town here, and he's trying to say,  
4 Look, we need to come together; we need to quit this  
5 infighting; we need to get together; we need to be  
6 at peace with each other," you know. And he was  
7 rewarded with banishment. And the SNM members and  
8 others wrote to the prison administration in 2011  
9 and they said, "We don't like this guy. Get him out  
10 of here or we're going to kill him."

11 And they did. They took him out, they put  
12 him in Level 6 in Santa Fe, because his attempts to  
13 have a plan, his attempts to unite, his attempts to  
14 bring people together failed. And you can read  
15 those papers. And what they'll tell you is: SNM  
16 didn't want him.

17 Now, after a couple of years of living in  
18 solitary confinement at Level 6 in Santa Fe, he  
19 earned the right to return to Southern in January of  
20 2013. And he came back. And he was like, jeez.  
21 Because you learn, in the New Mexico Department of  
22 Corrections, that's sort of where they aggregate all  
23 the alleged SNM members together. And it's not  
24 fair, because not all of them are SNM members, but  
25 that's where the majority of the validated guys are;

1 at least were in 2013.

2 But the same thing happened and in no  
3 short order. Everybody that lives there says, "Get  
4 Baca out of here. We don't like his ideas. We  
5 don't like him." And in August of 2013 he was  
6 banished yet again.

7 But the United States wants to say he's  
8 the leader of the SNM. But that's two banishments  
9 in three years, and he's back at Level 6. And  
10 again, it's recorded. You can put your hands on it.  
11 You can read the papers.

12 Now, he's living in Level 6 in 2014. He's  
13 over 300 miles away from the Southern facility down  
14 here with the Department of Corrections. And the  
15 United States wants you to believe that he killed  
16 Javier Molina, but he was nowhere near there. And  
17 they want to say that they have their cooperating  
18 witnesses that will testify about paperwork.

19 But here's the thing. You won't see any  
20 paperwork in this case, and here's the real critical  
21 point that I'm going to ask you to focus on and  
22 listen to during this trial. The FBI put Mr. Duran  
23 next to my client, Anthony Ray Baca, and recorded  
24 him from October 22, 2015, to December 3, 2015. And  
25 in all of those recordings you'll never hear him

1 confess. And they talked about all kinds of things.  
2 And I mean, they talked about unpleasant things.  
3 They talked about things that are going to make your  
4 skin crawl, and I'll be honest with you about it.  
5 But they never talked about him ordering a hit on  
6 Javier Molina, even though Mr. Duran asked him about  
7 it. And so what I'm saying is that if it's not  
8 recorded, it didn't happen.

9 Now, that's enough on Mr. Molina, because  
10 unlike everybody else in the room, Mr. Baca is also  
11 alleged to have assaulted Julian Romero. And that's  
12 another thing we need to consider. Because the only  
13 evidence you're going to hear is the evidence of  
14 individuals who want to avoid prison time. But what  
15 the undisputed evidence will show you -- and they  
16 will call in as a witness Gerald Archuleta, the  
17 leader of the SNM, who will say he ordered a hit on  
18 Julian Romero because when Julian Romero got out of  
19 prison and Gerald Archuleta was in prison, Julian  
20 Romero moved into his house and romanced his wife,  
21 and they've lived together ever since.

22 And that just didn't really go over well  
23 with somebody who's in prison, to have somebody who  
24 you thought was your friend go out and steal your  
25 wife. And at that time, it's undisputed, Gerald

1 Archuleta was the leader of the SNM. And you will  
2 hear testimony that he was the meanest, maddest,  
3 baddest guy around, you know. I mean, he was Bad,  
4 Bad Leroy Brown.

5 And so he ordered Julian Romero to be  
6 killed, and the evidence is going to be clear on  
7 that. Mr. Baca didn't order Mr. Romero to be  
8 killed. Gerald Archuleta did. And they're going to  
9 bring in a witness, Lupe Urquizo, and he's going to  
10 take that stand and he's going to try to implicate  
11 Mr. Baca. But listen carefully and look at his  
12 behavior; because he's going to tell you exactly  
13 what he told law enforcement, that after Mr. Romero  
14 was assaulted, did he call Mr. Baca? Did he write  
15 Mr. Baca a letter and say, "Hey, pat me on the back,  
16 I did a great job"?

17 Oh, no. He called Gerald Archuleta and  
18 said, "Gerald, I pulled it off. We did it. We beat  
19 the hell out of Julian Romero."

20 And according to Mr. Urquizo, you know  
21 what Mr. Archuleta told him? "Damn it, I told you  
22 guys to kill him. You only beat him up? What's  
23 wrong with you guys?"

24 Now, I want to talk about the real big  
25 picture here, the big-ticket item, the most

1 salacious charge: That Mr. Baca conspired to murder  
2 Gregg Marcantel, the Secretary of Corrections. I  
3 want to take you back to that first meeting that  
4 Eric Duran had with the FBI. Because after he  
5 finishes the introductory prefabrication -- or  
6 prevarication, I meant to say, pardon me -- after he  
7 finished lying to them to get in the door, they  
8 said, "Well, tell us what you know."

9 And he said, "Jeez. I think there are  
10 going to be all these murders."

11 And they asked him pointblank, "Is anybody  
12 going to murder the Secretary of Corrections?"

13 And he said, "Oh, no. I don't know what  
14 you're talking about."

15 But it put an idea in his head: Wow,  
16 that's a cool thought. They're interested in it.  
17 Maybe I should be interested in it.

18 And so they're going to talk about all  
19 these letters that were miraculously intercepted by  
20 Eric Duran. Mr. Duran went in, and you'll see, in  
21 the handwriting of FBI agents, notes from the people  
22 that he talked to. And what those notes say is:  
23 "Eric Duran came up to me and asked me if I wanted  
24 to hit Dwayne Santistevan."

25 So this idea didn't come from Mr. Baca.



1 This idea came from Eric Duran. And Eric Duran went  
2 and talked people into writing letters and even  
3 said, "Jeez, just give them to me. I'll make sure  
4 they get out."

5 But he had his own mission, and he  
6 collected the letters and gave them to law  
7 enforcement. And they were like, "Man, you really  
8 are our guy. You are our guy."

9 At the same time, there are some  
10 recordings of this. But Eric Duran was the one that  
11 controlled the on-and-off switch of that recorder.  
12 So it's going to be really hard. But if you pay  
13 attention to the details of these conversations, you  
14 can see it and you can hear it for yourself.  
15 Because when Robert Martinez and Roy Martinez are  
16 talking about the letters they're drafting, they  
17 actually tell Mr. Duran, "Just like we were talking  
18 about, just like you said," but those conversations  
19 aren't recorded. It will never happen. The only  
20 person that had the on-off switch was the guy that  
21 fled from the cops, the guy that dropped off  
22 prostitutes, the guy that allegedly slapped his  
23 stepdaughter, the guy that wanted to give back to  
24 our community. And you're going to have to decide  
25 for yourself what really happened. Because what did

1 happen was, after October 22nd, after spending a  
2 summer of creating this crime, of sitting down with  
3 this case agent, and telling him, "By God, Mr. Baca  
4 is eager, eager to kill the Secretary of  
5 Corrections. He can't wait to kill the Secretary of  
6 Corrections," they orchestrate this entire thing,  
7 where Mr. Baca comes back from out of state yet  
8 again, and they put him in a cell right next to  
9 Mr. Duran so Mr. Duran can record him at his  
10 leisure.

11 And over the course of the first couple of  
12 days, you'll be able to see it. You'll have the  
13 records, recording after recording, "Hey, let's talk  
14 about this crime. Let's do this. Let's do this."

15 But what happens, he goes, "Hey, I've got  
16 a great idea. Let's kill the Secretary of  
17 Corrections."

18 And Mr. Baca says, "No. Why would we do  
19 that? Why would I want to kill the Secretary of  
20 Corrections? He's just a patsy. He's being  
21 spoon-fed bullshit by all these guys that make our  
22 life a living hell. He's a political hack. I have  
23 no beef with him."

24 And then you'll see the recording stop for  
25 hours. The hours turn into days. No recordings.

1 Nothing.

2 Now, the next time he cuts the recording  
3 on, yeah, Mr. Baca is gung ho. I'm not going to  
4 deny it. But the real question you're going to have  
5 to struggle with is: Why is he gung ho? Is he gung  
6 ho because some con artist wants a meal ticket out  
7 of the prison, or is he gung ho because he wanted  
8 the Secretary of Corrections dead? I would argue  
9 that it's the former, and not the latter.

10 So we've got a long road ahead. We're  
11 going to be in this together. And I applaud you for  
12 doing your civic duty, for sitting with us and  
13 engaging in what's going to be an intellectual and  
14 factual expedition into what prison life is really  
15 like. And it's not going to always be pretty. But  
16 we're going to ask you, like we asked you in voir  
17 dire, to judge these men against what the  
18 allegations are, and not hold them responsible for  
19 their past deeds, but to look at them as individuals  
20 in the eyes of the law, and really pay attention to  
21 the details of the facts of this case, and really  
22 look into the eyes of these witnesses and assess  
23 their credibility as human beings.

24 We're going to ask you to find Mr. Baca  
25 not guilty. Thank you.

1 THE COURT: Thank you, Mr. Lowry.

2 All right, ladies and gentlemen. We're  
3 going to take our first break today, this morning,  
4 and I'm going to remind you of a few things that are  
5 especially important. Until the trial is completed,  
6 you're not to discuss this case with anyone, whether  
7 it's members of your family, people involved in the  
8 trial, or anyone else, and that includes your fellow  
9 jurors. If anyone approaches you and tries to  
10 discuss the trial with you, please let me know  
11 immediately. Also, you must not read or listen to  
12 any news reports of the trial. Again, don't get on  
13 the internet and do any research for purposes of  
14 this case.

15 And finally, remember that you must not  
16 talk about anything with any person who is involved  
17 in the trial, even if it doesn't have anything to do  
18 with the trial.

19 If you need to speak with me, simply give  
20 a note to one of the court security officers or Ms.  
21 Standridge.

22 I'm probably going to repeat these a lot  
23 today and then start trailing off as we get the  
24 trial going, but do keep them in mind each time we  
25 take a break, whether I repeat them or not.

1 All right. We'll be in recess for about  
2 15 minutes. All rise.

3 (The jury left the courtroom.)

4 THE COURT: All right. We'll be in recess  
5 for about -- Ms. Jacks?

6 MS. JACKS: Your Honor, I have something  
7 to put on the record.

8 THE COURT: All right. Why don't we do it  
9 after the break?

10 MS. FOX-YOUNG: I was just going to  
11 suggest if we have a few minutes before the jury  
12 comes in to make a record.

13 THE COURT: All right. Let's do that.

14 (Court was in recess.)

15 THE COURT: All right. Ms. Jacks, you  
16 wanted to put something on the record?

17 MS. JACKS: I did, Your Honor.

18 THE COURT: Ms. Jacks.

19 MS. JACKS: Your Honor, I wanted to  
20 lodge two objections with respect to the opening  
21 statements, and move for a mistrial. And the first  
22 objection is with regards to Ms. Armijo's opening  
23 statement, in which she referred to a statement by  
24 Mr. Baca, something along the lines that, They  
25 called my bluff, now they have a dead man on their

1 hands, which is a reference to an alleged statement  
2 by Mr. Baca, acknowledging that he ordered the  
3 Molina murder. The reason I'm objecting is because  
4 this clearly falls within the category of statements  
5 that I've been arguing is inadmissible against Mr.  
6 Sanchez. Inadmissible because it's a hearsay  
7 statement as to Mr. Sanchez that tends to  
8 corroborate the veracity of Government informants.

9 And based on the case -- I think it's the  
10 Sanpol case, S-A-N-P-O-L, case that I cited to the  
11 court on Friday, statements -- inadmissible  
12 statements that corroborate cooperating witnesses  
13 are prejudicial evidence against the nondeclarant  
14 defendants.

15 THE COURT: All right. I'll probably just  
16 give a limiting instruction. I'll start by  
17 explaining to the jury that they can't use this  
18 evidence. But that will be how I'll handle it.

19 MS. JACKS: I would ask that the Court do  
20 that when the evidence is admitted, and not remind  
21 them of it now right after opening statements.

22 THE COURT: All right. Just tell me when  
23 you want it.

24 MR. BECK: Your Honor, may I respond to  
25 that.

1 THE COURT: You may.

2 MR. BECK: I think that the Sanpol may be  
3 an opinion from a circuit court outside of this  
4 circuit. The controlling Supreme Court precedent is  
5 clear under Bruton that you can have statements that  
6 corroborate other information. So if the only thing  
7 is that a statement of one co-defendant, an  
8 admission of one co-defendant corroborates other  
9 information and from that the jury can infer and  
10 even obviously infer who that defendant is that's  
11 being referred to. That's permissible under Bruton,  
12 that's perfectly fine. What's not permissible under  
13 Bruton is to have a statement that is clearly  
14 redacted that the jury can tell that redaction  
15 refers to this co-defendant that's not permissible  
16 but if all it does is corroborate if all this  
17 statement says if they would have let me out then  
18 that never would have happened no Javier Molina  
19 although they can infer from that the other people  
20 killed Javier Molina, and Baca knew something about  
21 that. That's permissible. And I'll cite to the  
22 Court -- I think I've got it here.

23 THE COURT: I don't think it's a Bruton  
24 problem. I think what Ms. Jacks is raising is an  
25 evidence problem, that the statements made by Mr.

1 Baca can't be used against anybody else.

2 MS. JACKS: I'm also raising a Fifth  
3 Amendment due process problem along the lines that  
4 I've been arguing to this Court. That's part of the  
5 opinion of Bruton but also really Jackson versus  
6 Denno. I think Mr. Sanchez has a right to be tried  
7 with admissible evidence.

8 THE COURT: We've come up with a solution,  
9 my solution. I'll give a limiting instruction. I  
10 think you're entitled to it. And I'll give it when  
11 you request it.

12 What's the other objection?

13 MS. JACKS: The other objection and basis  
14 for the motion for mistrial is I think in Mr. Perez'  
15 opening statement there was reference to what we've  
16 been alluding to, that there are -- there is tension  
17 and conflicting defenses here. Mr. Perez -- the  
18 attorneys for Mr. Perez argued, essentially, that  
19 Mr. Perez was threatened to give up a piece of his  
20 walker, and that he was scared. And that the  
21 context of the argument, it was clear that the  
22 individual who scared him was Mr. Sanchez.

23 Again, I think that this is just the tip  
24 of the iceberg. We've been telling the Court about  
25 this for a while since it became apparent that they



1 were going to proceed with this defense. And I  
2 think it just going to get worse.

3 THE COURT: All right. Send me a letter.  
4 I'm going to probably have to have arguments on this  
5 through letter.

6 MR. BECK: I can --

7 THE COURT: I'll deny the motion for  
8 mistrial. Deny motion to sever.

9 All rise. You're going to have send me  
10 arguments at night, and things like that. Because  
11 we can't have all the day filled with argument like  
12 we did for the month of December.

13 Counsel, particularly for the defendants,  
14 you need to speak up. The jury says they can't hear  
15 you. So you're going to have to stay close to a  
16 microphone. Speak up. But they're already talking  
17 about it.

18 You can talk to me while we're waiting,  
19 Mr. Beck.

20 MR. BECK: Your Honor, I was just going to  
21 cite to the Court the Supreme Court's opinion in  
22 Richardson against March, that's 481 U.S. pin cite  
23 would be pages 208 through 211.

24 THE COURT: I tend to agree. I think that  
25 was one of the things that you put in your brief, if

1 I recall --

2 MR. BECK: It was, Your Honor.

3 THE COURT: -- on Saturday. And it was  
4 one of the things that was persuasive to me in  
5 feeling like I could do this trial without having  
6 two juries. So I did look at those. And I tend to  
7 agree with you on that.

8 MR. CASTELLANO: Related to that issue,  
9 before the jury comes in, the statement that the  
10 Rudy Perez was threatened is actually going to be  
11 inadmissible hearsay in this case. That's a  
12 statement the defense wants to get from Mr. Roark.  
13 But it's not a statement by a party opponent, if the  
14 defense tries to get it in through Mr. Roark. So  
15 it's actually not coming in this trial at all. It's  
16 inadmissible hearsay. So we're going to cure that  
17 problem during trial because that's not coming in.

18 THE COURT: Okay. And I assume, Ms.  
19 Jacks, you don't want anything done on that second  
20 one at the present time as well, right?

21 MS. JACKS: I think the second one, Your  
22 Honor, was the subject of --

23 THE COURT: Let's -- all rise.

24 (The jury entered the courtroom.)

25 THE COURT: Everyone be seated. Does the

1 Government wish to call its first witness or  
2 evidence.

3 MR. CASTELLANO: Yes, Your Honor. And for  
4 this witness we'll be showing some photos. I'm not  
5 sure if the visualizer is on.

6 THE COURT: All right. We'll get it on  
7 for you.

8 The first witness is Mr. Acee?

9 MR. CASTELLANO: Yes, Your Honor, the  
10 United States calls FBI Special Agent Bryan Acee.

11 THE COURT: Mr. Acee, if you'll come up to  
12 the witness stand on my right, your left, before  
13 you're seated, Ms. Standridge will swear you in.

14 BRYAN ACEE,  
15 after having been first duly sworn under oath,  
16 was questioned and testified as follows:

17 THE CLERK: Please be seated, and spell  
18 your name for the record.

19 THE WITNESS: Good morning. My name is  
20 Bryan Acee, B-R-Y-A-N, A-C-E-E.

21 THE COURT: Mr. Acee. Mr. Castellano.

22 MR. CASTELLANO: Thank you, Your Honor.

23 Ms. Standridge, before we begin, would it  
24 be possible to have the visualizer? I think the  
25 computer screen is up there now.

1 THE CLERK: It's on.

2 MR. CASTELLANO: It will be a little bit  
3 before --

4 MR. LOWRY: Your Honor, we have a hand  
5 raised in the jury box.

6 JUROR: We're having trouble hearing.

7 THE COURT: I've told them to speak up.  
8 Particularly at that table, grab a microphone. I  
9 told them before y'all came in. So --

10 DIRECT EXAMINATION

11 BY MR. CASTELLANO:

12 Q. Please tell us about your training and  
13 experience.

14 A. Yes. I began my law enforcement career in  
15 1997. I'm just short of about 20 years. I started  
16 out as a police officer and a detective. In 2008 I  
17 applied for a job with the FBI as a special agent,  
18 and I was hired the following year. So I've been an  
19 FBI special agent since 2009.

20 Over the past just about 20 years, I have  
21 worked gangs and drug violations and organized  
22 crime. Of course, as a police officer I spent some  
23 time doing patrol, and when I was able to promote  
24 out of that, I worked as a detective, again working  
25 gangs, drugs, organized crime.

1           The FBI, after graduating the academy,  
2 sent me to New Mexico. I worked here in Las Cruces  
3 for about five and a half years, and then I was  
4 transferred up to our Albuquerque Field Office in  
5 Albuquerque, where I was assigned to the gang task  
6 force.

7           Q.    What are your current responsibilities?

8           A.    So I'm a full-time FBI agent. I work gang  
9 and organized crime investigations. I have some  
10 collateral duties, one of which is I'm a firearm  
11 instructor for the FBI, so I help agents do their  
12 qualifications and training with the firearms. I'm  
13 one of our -- I've been a member of our SWAT team  
14 for a long time. I'm one of our team leaders now  
15 for this region, so when the FBI SWAT team has a  
16 call-out somewhere, I'll respond to that. And I  
17 serve as a training agent, basically a mentor, a  
18 senior agent to the new agents when they graduate  
19 the academy and they're assigned to Albuquerque.  
20 Some of those agents are assigned to work with me  
21 for about two years, and I'll stop there.

22          Q.    What types of responsibilities do you give  
23 the agents under you when you're training them?

24          A.    Well, it's like learning to drive a car, I  
25 guess, if I could use an analogy. I'll start out by

1 driving and doing most of the stuff, and as they  
2 gain that aptitude and extra confidences and  
3 abilities, they'll start to take over, such as in  
4 interviews, I'll do many of them so they can see my  
5 style. We'll often debrief after each incident and  
6 talk about what was good, what was bad. If  
7 everything goes well, about six months to a year  
8 into it, those agents are starting to conduct  
9 aspects of the investigation on their own under my  
10 supervision.

11 Q. As part of your training and experience,  
12 have you had any teaching opportunities?

13 A. I have.

14 MR. LOWRY: Relevance.

15 THE COURT: Overruled.

16 A. I'm an adjunct professor for the FBI in  
17 the areas of gangs, drugs, and the Juarez Cartel.  
18 I've also served as a guest instructor at the  
19 University of New Mexico and here in Las Cruces at  
20 NMSU on those same topics.

21 BY MR. CASTELLANO:

22 Q. Are you considered by the FBI to be a  
23 subject matter expert in any areas?

24 A. Yes, two; the first being the Juarez Drug  
25 Cartel, and now the SNM Gang.

1 Q. Do you have any expertise in terms of  
2 firearms and interstate commerce?

3 MS. JACKS: Your Honor, I'm going to  
4 object because I think we were told specifically  
5 that Mr. Acee is not testifying as an expert.

6 THE COURT: He's not testifying yet. He's  
7 giving his background.

8 MR. CASTELLANO: He's not, Your Honor.

9 THE COURT: Overruled.

10 BY MR. CASTELLANO:

11 Q. So let's talk about your qualifications  
12 when it comes to firearms and the interstate nexus.

13 A. I completed the ATF's Firearm Specialist  
14 Academy. That's significant in federal  
15 investigations, in that in order for the Government  
16 to charge a firearms violation, we have to show  
17 that, one, it's a firearm; and two, that it traveled  
18 in interstate nexus, so over state lines. So it's  
19 an area of training, just to be able to make those  
20 determinations and investigations.

21 Q. Are you considered the lead case agent in  
22 the investigation of the SNM prison gang?

23 A. I am.

24 Q. And did that investigation take place  
25 largely in the New Mexico prison system?

1 A. Yes, sir.

2 Q. And why did the FBI get involved in a  
3 state gang matter, if they're considered a state  
4 gang that you're investigating?

5 A. Our involvement focused on racketeering  
6 activities, which are a federal violation. They --  
7 racketeering activities are composed of numerous --  
8 what would otherwise be state violations such as  
9 murder, assault, robberies, things of that nature,  
10 can be investigated by the Government as  
11 racketeering activity.

12 Q. And was that your plan when you got  
13 involved with this case?

14 A. Yes.

15 Q. How did you first get involved in this  
16 case and when?

17 A. In early 2015, I think it was late  
18 February or early March, I was up at the  
19 Penitentiary of New Mexico in Santa Fe. That was  
20 also where the Department of Corrections  
21 headquarters is. I was up there on a separate gang  
22 investigation involving a California prison gang  
23 that had moved out to New Mexico, when I was  
24 approached by some officials from the Security  
25 Threat Intelligence Unit. They go by the acronym



1 STIU. Basically, they're a gang unit, and those  
2 officials provided me with eight letters that they  
3 had intercepted from one of their informants within  
4 the prison, that was to send the letters out to  
5 members -- to people on the street.

6 And they presented those letters to me,  
7 explained that the letters were from some of the  
8 bosses within the SNM Gang, and that they called for  
9 the murder of two Department of Corrections  
10 officials, the first being the cabinet secretary,  
11 Gregg Marcantel, and the second being the head of  
12 the gang unit, the statewide prison gang unit,  
13 Dwayne Santistevan.

14 Q. What did you do after receiving this  
15 information?

16 A. I opened a case on the SNM Gang. We  
17 comprised a task force and we began investigating  
18 not only those threats but the gang as a whole.

19 Q. Who did you try to partner with to further  
20 this investigation?

21 A. The task force was comprised of the FBI,  
22 the New Mexico Corrections Department, and the  
23 Bernalillo County Sheriff's Department in  
24 Albuquerque. Those were I'll call the full-time  
25 task force participants. We also had ad hoc or

1 part-time participation from all of the jails and  
2 detention centers in New Mexico, as well as some of  
3 the cold-case homicide units from the different  
4 police departments and sheriff's departments around  
5 the state.

6 Q. As part of your investigation, did you  
7 visit any of the state's prisons?

8 A. I think I've been out at all of them, yes.

9 Q. So let me ask you this: You mentioned  
10 that you were at the prison in Santa Fe. What is  
11 that normally referred to?

12 A. PNM.

13 Q. Is that the Penitentiary of New Mexico?

14 A. Yes.

15 Q. And when you're at PNM in Santa Fe, are  
16 there facilities there known as the North and the  
17 South?

18 A. Yes, sir.

19 Q. Please explain that to the members of the  
20 jury.

21 A. Simply stated, there are two facilities,  
22 similar looking. One is a little bit to the north,  
23 and immediately south of that is the South. The  
24 North facility is also referred to as the Level 6.  
25 That's the highest, most secure facility in our

1 state. The South is a lesser secure facility, and  
2 at the time housed the lower Level 5 facility, and  
3 at the time it housed many of the state gang  
4 members. I think they call them the predatory  
5 offenders; different units within that facility were  
6 housed at Level 5.

7 Q. You told us about the North and the South  
8 in Santa Fe. Is there another facility often  
9 referred to as the Southern?

10 A. Yes.

11 Q. What's the name of that facility?

12 A. The Southern New Mexico Correctional  
13 Facility is the facility here in Las Cruces. I  
14 often would confuse the South with Southern, so  
15 there is definitely a distinction there.

16 Q. You also mentioned partnering with  
17 cold-case homicide units. What was the purpose of  
18 doing that?

19 A. When we opened up the case on the SNM,  
20 through our initial review of hundreds of documents,  
21 we discovered that there were at least a dozen  
22 cold-case homicides around the state that there was  
23 suspected involvement with the SNM prison gang or  
24 SNM members who were on the street and those cases  
25 hadn't been solved. So we started collaborating

1 with the cold-case units to let them know we were  
2 looking into the cases, and we'd provide resources  
3 and partner up with them.

4 Q. I think you touched on this. When you  
5 refer to the term "cold case" in terms of a  
6 homicide, what does that normally refer to?

7 A. The trail has gone cold. These are older  
8 homicides, some dating back to -- in my case file, I  
9 think we had some homicides dating back into the  
10 '90s.

11 Q. I want to talk to you about some of the  
12 investigative techniques you used as lead case agent  
13 in this case. What types of, I guess, categories of  
14 techniques did you use?

15 A. I guess I'd categorize them as traditional  
16 techniques and then advanced techniques.

17 Q. What would be some of the traditional  
18 investigative techniques that you would consider?

19 A. A review of prior case files,  
20 collaboration with other law enforcement, state and  
21 local, interviewing former members of the gang,  
22 associates of the gang, family members, witnesses,  
23 reviewing -- in this case, since it's a prison gang,  
24 there are going to be prison files. Reviewing  
25 those, reviewing old police reports. Trying to

1 develop informants within the gang. Conducting  
2 surveillance, conducting drug and firearm buys, and  
3 serving subpoenas, search warrants, analyzing phone  
4 calls. That sort of stuff I would call our  
5 traditional investigative means.

6 Q. Did you -- as part of this, part of the  
7 investigation, did you ever try to partner with  
8 probation and parole authorities?

9 A. We did. So when I say we partnered with  
10 the Department of Corrections, they oversee the  
11 Probation and Parole Department as well.

12 Q. And what type of things would you do with  
13 probation and parole officials?

14 A. We would often accompany parole officers  
15 when they conducted home visits or interviews with  
16 SNM members who were on the street.

17 Q. For what purpose?

18 A. To be introduced to them, to collect  
19 information. The parole officers oftentimes were  
20 allowed to search their premises, to leaf through  
21 their document, notes, letters. And so we would go  
22 to accompany them so that we could have potential  
23 access to that information and that we could assess  
24 some of these offenders on the streets for  
25 ourselves. I'll be honest, prior to this

1 investigation I didn't know a lot about the SNM, so  
2 I was educating myself on the gang.

3 Q. All right. Is this still the 2015 time  
4 period?

5 A. Yes.

6 Q. Now, you also mentioned approaching gang  
7 members or suspected gang members. How easy or  
8 difficult was that, from time to time, to meet with  
9 them or gather information from those individuals?

10 A. I don't want to say it was difficult.  
11 There were some challenges with it. It depended if  
12 we wanted to overtly let them know we were the FBI,  
13 or if we wanted to maybe not broadcast that when we  
14 arrived and just assume a position of supporting  
15 parole. As we gained momentum in the investigation,  
16 most of my contacts with the SNM became overt. We  
17 would just let them know who we were and why we were  
18 talking to them.

19 Q. And what was the variety or array of  
20 responses you would get when overtly meeting with  
21 people who were either members or suspected members?

22 A. Well, everyone was respectful, in terms of  
23 respectful that the FBI agents were there to talk to  
24 them. Not everyone wanted to talk to us. Many did,  
25 and in different -- in varying levels of

1 cooperation. For example, some would talk to me,  
2 but they wouldn't want to go on the record. Some  
3 would say, "Yeah, I'm down. I'll tell you what you  
4 want to know."

5 Q. As you begin using these initial  
6 techniques to begin looking at the gang, what types  
7 of assessments are you making about this  
8 organization?

9 A. What I'm looking for, in any criminal  
10 organization, is their vulnerabilities. As we study  
11 them, our objective is to collect facts, to collect  
12 evidence, and what routes would allow us to do that.  
13 So in looking at the vulnerabilities of the SNM, one  
14 of the major ones that we noticed and we focused on  
15 was drug trafficking.

16 Q. What about firearms?

17 A. As well as firearms. I think that goes  
18 hand in hand with drug trafficking, but firearms and  
19 drug trafficking.

20 Q. Now, when you talk about crimes like that,  
21 what would you do when you would come across a  
22 violation of either the drug laws or firearms laws?

23 A. So one of the things we kept our eye on,  
24 one of the important reasons to liaison with the  
25 state and local officers is, I let them know if they

1 arrested any SNM members or associates, to give us a  
2 call, because oftentimes the SNM members had prior  
3 felony convictions. So we would have jurisdiction  
4 there where we could adopt the case, take it from  
5 the state and local level, bring it into federal  
6 court and charge them with being a felon in  
7 possession of a firearm. The federal drug laws are  
8 much like the state laws, and so I could adopt  
9 state-level cases and bring them into the feds so  
10 that I could prosecute them at a federal level.

11 Q. And when it came to drugs, for example,  
12 did you do any proactive work on the streets?

13 A. We did. We did what I'll refer to as  
14 controlled buys. We also did undercover buys,  
15 targeting members and associates of the SNM.

16 Q. And what would normally be the  
17 follow-through when you conducted a controlled buy  
18 of somebody?

19 A. Well, do you want me to explain what --  
20 the process of the controlled buy or what happened  
21 afterward?

22 Q. Let's begin with the process and then  
23 afterwards.

24 A. Sure. So a controlled buy, in simple  
25 terms, is a normal drug deal; it's just that we're



1 controlling it covertly. So typically the way it  
2 works is, we have an informant who has access to  
3 said drug dealer, in this case an SNM dealer. The  
4 informant meets with us. We cover what the  
5 expectations are, what the procedures should look  
6 like. We've already arranged how much we're going  
7 to purchase and what it's going to cost so that  
8 we're prepared for that.

9 When it comes time for the informant to  
10 make the purchase, we establish a surveillance team.  
11 After conducting a briefing, we set up on the  
12 location where we're going to do the buy so that we  
13 can watch it, and then I equip the informant with a  
14 recorder and a live wire. That's important, so  
15 that, one, it records; and two, I can hear the  
16 transaction, because they're dangerous.

17 And one of the things that we have to have  
18 in place is a rescue team in case it's a rip-off or  
19 a robbery or something else occurs that would  
20 necessitate the agents rushing into the scene to  
21 render it safe.

22 Before we send the informant to make the  
23 purchase, we search him or her and their vehicle to  
24 make sure there is no contraband, there is no drugs  
25 in the car, there is no extra money. If they have

1 money, I hang onto it; I count it in front of them,  
2 and I'll give it back to them later because we don't  
3 want any extra drugs purchased.

4           Once the transaction happens, it takes  
5 place, we're listening to it, and watching it from a  
6 surveillance platform. The informant drives away  
7 from the drug deal, meets us at a predetermined  
8 location. We collect the evidence, we debrief them,  
9 we search them and their car again, again to make  
10 sure there is no extra contraband or funny business.

11           Transitioning to the second part of your  
12 question, we use those controlled buys to establish  
13 probable cause to arrest people and to serve search  
14 warrants, which was a big part of this  
15 investigation.

16           Q. You mentioned the use of informants. Do  
17 you sometimes also use undercover agents?

18           A. Yes. It's difficult to have an undercover  
19 agent cold-call somebody or meet them. So we'll use  
20 the informant to do the initial purchases, then  
21 they'll introduce their cousin or their friend, or  
22 someone, and that's when we'll insert an undercover  
23 agent to take over those buys.

24           The same procedures, protocols take place  
25 when the undercover does a buy, minus searching

1 them. I wouldn't search an undercover FBI agent,  
2 but all the other safety precautions and  
3 evidence-handling precautions are there.

4 Q. On that scenario, you mentioned  
5 introducing somebody as friend or a cousin. Is that  
6 friend or cousin the undercover agent?

7 A. Yes.

8 Q. Now, through some of these proactive  
9 techniques, do you have examples of people from this  
10 case who you arrested under those circumstances?  
11 Let me begin with someone named Mario Montoya.

12 A. Yes.

13 Q. What happened with him?

14 A. I utilized an SNM member who was willing  
15 to work with us. I signed him up as -- excuse me.  
16 He was already a Bernalillo County Sheriff's  
17 informant. And so in my liaison with that  
18 department, I found out that they had an SNM member  
19 who could make buys from other members. So we  
20 utilized that informant to buy from Mario Montoya.  
21 And following those same protocols I just explained,  
22 we did a series of buys from Mario.

23 Q. Now, you said you utilized an SNM member.  
24 How did you know that person was a SNM member?

25 A. The sheriff's department knew he was. I

1 met him. I talked to him. He was a self-admitted  
2 one. He claimed to be one.

3 Q. And along the same lines with the  
4 undercover purchases, what can you tell the jury  
5 about any operation regarding someone named Chris  
6 Garcia?

7 A. Chris Garcia is an SNM member that lived  
8 on the streets in Albuquerque, was a pretty prolific  
9 heroin and crack cocaine dealer for many years. He  
10 was one of our instant and immediate targets in the  
11 investigation, the proactive portion, the portion on  
12 the streets. And we utilized, I think, three  
13 separate undercover -- excuse me, three separate  
14 informants and then eventually an undercover agent  
15 to buy from Chris Garcia.

16 Q. Now, in each of those examples, were both  
17 Mario Montoya and Chris Garcia charged with drug  
18 offenses?

19 A. Yes.

20 Q. I'm going to ask you about another person  
21 named Robert Lovato. How did you come across him,  
22 if you did?

23 A. During I believe it was our phase 2  
24 operation or take-down of this case, after many  
25 months of investigations, we would take the case

1 down in phases. And during our second phase, I had  
2 asked the Department of Corrections to once again  
3 conduct parole searches on all SNM members on the  
4 street. And this was contemporaneous with us  
5 serving federal search warrants on other members and  
6 arresting members. So while we're out doing that,  
7 the Department of Corrections parole officers are  
8 searching SNM parolees' houses. And the parole  
9 officers located a firearm in Mr. Lovato's house.

10 Q. Under those circumstances, were those some  
11 of the means you used to get into the gang or to  
12 unveil criminal activity?

13 A. Yes.

14 Q. Was Mr. Lovato charged with anything?

15 A. He was charged with being a felon in  
16 possession of a firearm.

17 Q. Does there come a point where undercover  
18 operations only take you so far in an investigation?

19 A. Yes.

20 Q. And what techniques do you then employ  
21 once you get to a certain point?

22 A. Well, some of the other techniques we can  
23 employ, and did in this case, is wiretaps or phone  
24 taps. We call them wire intercepts. We did a  
25 series of those. And then we also do what the FBI

1 refer to as covert electronic surveillance, and  
2 that's bugs, wires; those are the terms used. But  
3 recording devices, hidden ones.

4 Q. As part of the use of these techniques,  
5 did you get court orders beforehand to wiretap a  
6 phone?

7 A. Yes. If I remember correctly we did eight  
8 or nine wiretaps with, I think, eleven extensions.  
9 And we did all of those through the Court. The  
10 Court allows us to do those for 30 days at a time,  
11 and that's why it necessitated so many extensions.  
12 We would go back to the Court and request an  
13 extension. In every wiretap in this case, we had  
14 court orders to do that.

15 Q. And on whose phone would you be listening?  
16 Give us examples, please.

17 A. Sure. Do you want examples by name, or --

18 Q. Yes.

19 A. Okay. For example, I believe you heard  
20 about an informant named Eric Duran. He's one of  
21 the individuals that I caused to have a phone inside  
22 the prison that we had a wiretap on. All of the  
23 wiretaps in this case were phones utilized by  
24 informants who were talking to other SNM members,  
25 either buying drugs or buying guns or talking about

1 murders or other SNM business, and I wanted those  
2 incidents recorded. So I'd provide them with a  
3 phone and get a court order to make sure we were  
4 recording those phone calls and text messages.

5 Q. All right. You just mentioned having the  
6 phone in prison. Are phones, cellphones, allowed in  
7 prisons?

8 A. They are not.

9 Q. What steps did you have to take in order  
10 to introduce a phone into a facility like that?

11 A. I had to get the permission of the deputy  
12 secretary, who was the point of contact in this  
13 operation. That was a gentleman by the name of Mark  
14 Myers, who is now retired. Normally, we would  
15 probably go to the cabinet secretary, but in this  
16 case he's the victim, so we were not communicating  
17 with him and not going to him for resources. So we  
18 went to Mr. Myers. I got his permission. And then  
19 we went through the steps of actually introducing  
20 the phone into the facility, which was -- has its  
21 own challenges.

22 Q. You mentioned an alleged victim. So if  
23 Mr. Marcantel is an alleged victim in this case, why  
24 would you not go to him for permission?

25 A. It's just not appropriate, in my mind. We

1 shouldn't. As a victim, he should not be involved  
2 and was not involved in our investigation. We  
3 immediately identified another point of contact, and  
4 that was Deputy Secretary Myers.

5 Q. And were there times when permission would  
6 also be sought of wardens of the facilities?

7 A. Yes. That did occur. I would not  
8 communicate beyond Mr. Myers, but he would filter to  
9 people within his office that needed to know.

10 Q. Generally speaking, I think you mentioned,  
11 are cellphones contraband in the facility?

12 A. They are contraband.

13 Q. So under these circumstances, were they  
14 permitted with the permission of the appropriate  
15 officials?

16 A. Yes. Our phones that went in appeared to  
17 be contraband to anyone that saw them. But we had  
18 the required permissions to have them in there.

19 Q. And how many phones did you introduce into  
20 facilities as part of this investigation?

21 A. Two.

22 Q. And did you follow the same procedures on  
23 each occasion?

24 A. I did.

25 Q. Now, since this is a prison facility, was



1 this something that you made widely known to the  
2 particular institution where the phone was? Or what  
3 steps did you take to conceal that?

4 A. No, quite the opposite. We didn't want it  
5 known, and we wanted it known to as few people as  
6 possible. If I remember correctly, our legal  
7 department actually had those that were aware of the  
8 operation sign documentation that they would keep it  
9 secret. At the time, we had convened a federal  
10 grand jury and the folks that knew about our secret  
11 operation in the prison had to sign forms saying  
12 that they would keep that information confidential.

13 Q. Why did you want to reduce the number of  
14 people who knew about the operation?

15 A. A prison environment is a tough place to  
16 do any kind of undercover work. And unfortunately,  
17 no disrespect to the Department of Corrections, but  
18 we and the State Police arrest a lot of correctional  
19 officers who bring phones or other contraband in or  
20 have sex with inmates or other violations. And so  
21 from my perspective, it's not a trustworthy  
22 environment where we want to put that business out.

23 The other problem is the inmates. You  
24 know, they're largely standing and sitting around  
25 watching everything that moves around them in the

1 pods and around the facility, and having a lot of  
2 extra movement is not a good thing in that kind of  
3 investigation.

4 Q. Earlier you mentioned Mario Montoya and  
5 the drug investigation regarding him. What happened  
6 as a result of him being charged with drug offenses?

7 A. He was placed on federal pretrial  
8 supervised release under the authority -- or excuse  
9 me, not the authority; under the authority of the  
10 Court but under the supervision of the FBI. People  
11 that are awaiting trial are under some kind of  
12 supervision, and in this case it was under our  
13 supervision. He was subsequently relocated from New  
14 Mexico to another state.

15 Q. When you released him under your  
16 supervision, it was for what purpose?

17 A. To relocate him, keep him available for  
18 court proceedings, for these proceedings, and to get  
19 him out of New Mexico and away from the SNM.

20 Q. Did Mr. Montoya do work for the FBI in an  
21 undercover capacity?

22 A. He did.

23 Q. And what can you tell us about the use of  
24 any phone issued to him by the FBI?

25 A. I provided Mr. Montoya with a cellphone

1 that had the wiretap that I described earlier. Mr.  
2 Montoya was utilized to purchase drugs. I can't  
3 remember if he purchased any firearms. He  
4 subsequently acquired one from Mr. Garcia. But he  
5 was used to meet with other SNM members, and then to  
6 make drug buys, controlled drug buys. He also was  
7 later utilized as a -- furthering his undercover  
8 capacity on the streets in the plot to kill  
9 Marcantel and Santistevan.

10 Q. So you had him involved with that part of  
11 the investigation?

12 A. I did.

13 Q. What types of phones did you issue to  
14 Mr. Duran and Mr. Montoya?

15 A. They had flip phones, just kind of  
16 old-school Walmart \$19.99 flip phones. Particularly  
17 in the prison setting, because of the means in which  
18 the phones are smuggled, it needed to be a smaller  
19 phone that looked like it could be in a prison  
20 environment.

21 Q. Okay. So you mentioned utilizing Eric  
22 Duran, who was in prison; and Mr. Montoya out of  
23 prison. What -- at some point in time do they cross  
24 paths in this investigation?

25 A. They do.

1 Q. And how is it that they cross paths?

2 A. We had caused Mr. Baca to return from the  
3 prison he was at in Colorado to New Mexico. Mr.  
4 Baca was situated in a cell next to Mr. Duran. As  
5 those two conversed, Mr. Baca was made aware of the  
6 fact that Duran had a cellphone and Duran would make  
7 calls for Baca. He couldn't hand the phone to him  
8 because they were in separate cells, but there were  
9 vents between the cells where Duran could put it on  
10 speaker and hold it next to the vent and Baca would  
11 talk into it.

12 During this process and the plot to murder  
13 Gregg Marcantel, there was much discussion about who  
14 was a good member on the streets that would actually  
15 do this hit.

16 Now, I'm aware of this because Duran is  
17 participating in this and there's phone calls. On  
18 the other end of it, I'm aware of it because they're  
19 reaching out to Chris Garcia, that SNM drug dealer  
20 that I talked about earlier, and they're wanting  
21 Chris to finance the operation and find somebody  
22 that would do the operation.

23 Our concern was they find somebody that's  
24 not working for us, and they could be successful.  
25 So this is where we inserted Mario Montoya, and we

1 suggested -- on Mario's end, we're pushing him to  
2 get in touch with Chris so that he presents himself,  
3 shows that he's available to do this. And on Eric  
4 Duran's end, I'm also pushing him to, say, suggest  
5 Mario.

6 Now, Mario and Eric don't know they're  
7 both working for the FBI, so both phones -- we're  
8 kind of getting double recordings there, but that's  
9 all right.

10 Q. That's what I was going to ask you, is  
11 whether or not those two, as cooperators in this  
12 investigation, knew that the other one was  
13 cooperating.

14 A. They did not.

15 Q. Why did you not share that information  
16 with each of them?

17 A. They didn't need to know that. The  
18 informants just need to follow their instructions,  
19 and they're not privy to the investigative  
20 techniques that we are. They're not part of the  
21 decision process.

22 Q. How did you come to know Eric Duran?

23 A. I started off by explaining how the  
24 threats evolved and how I got involved in the case,  
25 excuse me. And the informant that had provided the

1 letters to the STIU officials was Eric Duran. He  
2 had at that time been an STIU informant, I think,  
3 for a little while, and then he had been introduced  
4 to some other FBI agents.

5 I didn't meet Mr. Duran till later that  
6 summer because another FBI agent was working with  
7 him. So I would just coordinate with that agent  
8 what Duran's efforts were. But at that time I  
9 hadn't given him a phone yet. I hadn't given him a  
10 recording device yet. I was getting intelligence  
11 updates from him.

12 Q. Now, you mentioned meeting Mr. Duran in  
13 the summer. What year?

14 A. I think it was August of 2015.

15 Q. Now, for what purpose did you come to know  
16 Mr. Duran and -- instead of the other agent you --  
17 agent or agents you mentioned that he was working  
18 with?

19 A. There were a couple of factors. At that  
20 point we're -- you know, we're four to five months  
21 into the investigation. It was largely -- it  
22 started out largely as proactive operations on the  
23 street, because we didn't know how big the threat  
24 was, and I didn't know the SNM. So my first  
25 objective was: Let's hit the streets. The prison

1 officials can tell us who is there. Let's find out  
2 what threats are on the street. Let's look for  
3 vulnerabilities in these guys. How are we going to  
4 get into them? Where do they make their mistakes?  
5 Let's study them a little bit.

6 So three or four months into this, we're  
7 now in the full swing of this investigation. It's  
8 picked up momentum. And at that point I think it's  
9 safe to say our task force took over the management  
10 of all SNM informants in the state. If a police  
11 department had one, another federal agency had one,  
12 we would push to manage that. And so that is  
13 largely how that other agent said, "Okay, here's  
14 Eric Duran," and I sat down and met him for the  
15 first time in August.

16 Q. So you told the members of the jury that  
17 you first received information about a threat in  
18 March of 2015; that you meet Eric Duran in August of  
19 2015. And when is it that you make arrangements to  
20 return Mr. Baca to New Mexico?

21 A. I believe it was October, two months  
22 later.

23 Q. Okay. You mentioned the name Mr. Baca.  
24 Do you see him in court today?

25 A. I do.

1 Q. Please point him out and identify him for  
2 us.

3 A. He's seated against the back wall. He has  
4 a shaved head, a dark-colored suit, and a  
5 brownish-colored tie.

6 Q. Why, as part of this investigation, did  
7 you try to have Mr. Baca moved back to New Mexico?

8 A. Well, as we dug deeper into the threats  
9 and what was behind them, as we dug deeper into the  
10 SNM, we learned a couple of things that pertained to  
11 that movement. One is that Mr. Baca was a leader,  
12 and that Mr. Baca had -- the idea to hit corrections  
13 officials, according to other members of the gang,  
14 had originated with Mr. Baca; that he wanted, I  
15 think his words were, "to put the SNM on the map"  
16 with the other prison gangs around the country.

17 MR. LOWRY: I'm going to have to object.  
18 This is hearsay.

19 THE COURT: Well, we probably don't need  
20 to be eliciting it from him, so sustained.

21 MR. CASTELLANO: Understood, Your Honor.

22 BY MR. CASTELLANO:

23 Q. So as part of the investigation, did it  
24 become important to move Mr. Baca back to further  
25 the investigation?



1 A. Yes.

2 Q. Where was he before he was returned to New  
3 Mexico?

4 A. He was in Florence, Colorado, at a federal  
5 facility. Not there on federal charges; just an  
6 interstate compact, there as a state inmate.

7 Q. So is it your understanding through the  
8 compact that sometimes states exchange prisoners  
9 with each other?

10 A. Yes.

11 Q. So just to be clear, Mr. Baca is in  
12 Colorado on exchange, not on a new crime committed  
13 in Colorado?

14 A. Correct.

15 Q. Were you aware of whether Mr. Baca was  
16 fighting his transfer out of state and wanted to  
17 return to the state?

18 MR. LOWRY: Objection, leading.

19 THE COURT: Overruled.

20 A. Yes, he was fighting it. The paperwork  
21 that I reviewed indicated that there was a process.  
22 He was fighting it and --

23 MR. LOWRY: Objection, Your Honor. This  
24 is hearsay.

25 THE COURT: Lay a foundation as to how he

1 got the information.

2 BY MR. CASTELLANO:

3 Q. Let me just ask you this: From the  
4 investigation, was it your understanding that Mr.  
5 Baca wanted to return to New Mexico?

6 A. Yes.

7 Q. So as part of this investigation, what did  
8 you make it look like when he returned to New  
9 Mexico?

10 A. That his wish was granted.

11 Q. Okay. So if he's here in approximately  
12 October of 2015, what do you do to further the  
13 investigation focusing on Mr. Baca?

14 A. I asked that the Department of Corrections  
15 house him next to Eric Duran, because Duran had a  
16 recording device and he had a cellphone. The  
17 Department of Corrections did that. At the time,  
18 Duran and several other members of the SNM were  
19 housed at the North facility, the Level 6 facility.  
20 When Mr. Baca arrived back to New Mexico, that's  
21 where he went, and he landed in the cell next to  
22 Mr. Duran.

23 Q. And just to remind the members of the  
24 jury, the North facility is the one in Santa Fe?

25 A. Yes, sir.

1 Q. All right. Tell us how the operation  
2 proceeds once Mr. Duran, with a phone, and Mr. Baca  
3 are next to each other?

4 A. Mr. Duran started recording certain  
5 statements Mr. Baca made. Mr. Baca would  
6 participate in and make phone calls through  
7 Mr. Duran's cellphone. And at the point in which  
8 Mr. Baca wanted to communicate the mechanics of the  
9 hit on Gregg Marcantel, phone calls were made to  
10 Chris Garcia, a member who was on the streets, the  
11 one that we'd been buying drugs from.

12 Baca asked --

13 MR. LOWRY: Objection, Your Honor,  
14 hearsay.

15 THE COURT: Are you trying to elicit this  
16 out-of-court statement?

17 MR. CASTELLANO: No, Your Honor.

18 THE COURT: All right. Let's move on.

19 BY MR. CASTELLANO:

20 Q. So I won't worry about statements at this  
21 point. What I'm going to ask you is whether or not  
22 there were recordings made from the interactions  
23 from Mr. Duran and Mr. Baca.

24 A. There were a lot of recordings made.

25 Q. And you also mentioned earlier that by

1 this time, Mr. Duran has the phone and then Mr.  
2 Montoya has a phone on the streets. Is this the  
3 part of investigation where they come together and  
4 you have a phone conversation from in the prison and  
5 outside of the prison being recorded?

6 A. Yes.

7 Q. So what other types of crimes did you  
8 investigate as part of this larger investigation?

9 A. Drug dealing, firearms trafficking,  
10 firearms possession, use of a firearm in furtherance  
11 of drug trafficking or in a crime of violence,  
12 carjacking, Hobbs Act armed robbery, intimidation of  
13 witnesses, and introducing contraband into a jail or  
14 prison facility.

15 Q. Now, eventually, as this investigation  
16 progresses, does there come a point where you, in  
17 connection with the U.S. Attorney's Office, make  
18 charging decisions and present a case, the case to a  
19 grand jury?

20 A. Yes.

21 Q. And approximately when did that happen?

22 A. Around the 1st or 2nd of December 2015.

23 Q. And did you name that part of the process  
24 or the investigation?

25 A. Phase 1.

1 Q. And since you have a phase 1, did you have  
2 in mind later on having later phases as part of this  
3 investigation?

4 A. Yes, sir.

5 Q. So as part of phase 1, tell us what  
6 happened once the case was presented to the grand  
7 jury. What happened with the investigation?

8 A. The indictment was presented to the grand  
9 jury, arrest warrants were issued. Following that,  
10 we spent a couple of days conducting site  
11 assessments of where all the targets or the people  
12 to be arrested were. We brought in extra resources  
13 from the FBI, SWAT teams, helicopters, aircraft, the  
14 stuff that we need to conduct simultaneous takedown  
15 around the state, if you will.

16 And so we did that, if my memory serves me  
17 correct, December 3, 2015, very early in the  
18 morning. In fact, we started at 4:00 a.m., I  
19 believe. Some of the search warrants that I wrote,  
20 we were granted permission from the Court to serve  
21 them at that time in the morning.

22 So we served dozens of search and arrest  
23 warrants. At the same time, the New Mexico  
24 Corrections Department locked down five prison  
25 facilities around the state that housed SNM members

1 and their internal -- I believe they call it --  
2 SCRT, their Special Corrections Response Team,  
3 extracted the SNM members and searched their cells.  
4 And if my memory serves me, the Department of  
5 Corrections Probation and Parole conducted about 45  
6 parole searches around the state of SNM members.

7 Q. Now, you said the prison facilities are  
8 locked down. What's your understanding of what a  
9 lockdown is at a facility?

10 A. There is no movement by the inmates.  
11 Everyone stays in their cell, and all programming  
12 and movement is suspended until the lockdown is  
13 lifted.

14 Q. And if you recall, which facilities were  
15 involved with the lockdown?

16 A. PNM up in Santa Fe; Southern, down here in  
17 Las Cruces; Western, out in Grants, New Mexico;  
18 Eastern -- that location escapes me -- and Central,  
19 which is in Los Lunas, New Mexico.

20 Q. Is Central the prison you see when you're  
21 driving between Albuquerque and Las Cruces on the  
22 side of the road?

23 A. Yes, it would be on your right if you're  
24 going northbound. So it's located east of the  
25 freeway.

1 Q. And as part of that process, what happened  
2 to individuals who were arrested on that particular  
3 day of the takedown?

4 A. We set up what I'll call a prisoner  
5 processing center. We took over a state building in  
6 downtown Albuquerque. They call it the Gold  
7 building. It's a New Mexico Corrections Department  
8 building. And because there were arrests taking  
9 place all over the state, as well as out of state,  
10 actually -- there were a couple of operations -- as  
11 arrestees were arrested, they were brought to the  
12 central processing area so that we could fully  
13 identify them, fingerprint them, photograph them,  
14 and then read them their rights and attempt to  
15 interview them.

16 Q. And you mentioned photographing people.  
17 What was the purpose of photographs?

18 A. Twofold. I'd written a search warrant  
19 to -- I'd requested the Court's permission to  
20 photograph them, basically their entire body minus  
21 genitalia. That was to capture their tattoos, both  
22 street gang tattoos and prison gang tattoos. The  
23 search warrant also authorized, I forgot to mention  
24 earlier, the collection of DNA, which is a protocol  
25 we have to do in the FBI when we arrest somebody;

1 and then to interview them.

2 Q. I'm going to begin with the people that  
3 are on trial here, and I'm going to show you some  
4 photographs. I'll begin with Government's Exhibit  
5 548, 549, 550, 551, 552.

6 MR. LOWRY: Your Honor, may we approach  
7 real quickly?

8 THE COURT: You may.

9 MR. CASTELLANO: Those will be 549 through  
10 560.

11 (The following proceedings were held at  
12 the bench.)

13 THE COURT: So you're going 548 through  
14 560. There are no gaps there?

15 MR. CASTELLANO: That's correct, Your  
16 Honor.

17 THE COURT: Mr. Lowry.

18 MR. LOWRY: Your Honor, I should have  
19 talked to Mr. Castellano earlier about working out a  
20 protocol. If he'd read off the Bates numbers, if  
21 he's not going to show them to me in the court.  
22 They disclosed all the exhibits. We're just going  
23 to work on that level. It would be nice to get a  
24 heads-up.

25 THE COURT: He did yesterday. He told you



1 what exhibits the exhibits were going to be, and  
2 offered to show them to you yesterday.

3 MR. LOWRY: We looked at them this  
4 morning. We don't mind the full-body shots. I'm  
5 not sure how many -- 12 photographs are necessary of  
6 Mr. Baca. It's overkill.

7 MR. CASTELLANO: These are actually Mr.  
8 Sanchez.

9 THE COURT: There's a whole bunch there.  
10 It's not just Mr. Baca.

11 MR. LOWRY: Fair enough. I don't have  
12 standing to --

13 THE COURT: Well, it's all four  
14 defendants; right?

15 MR. CASTELLANO: That series is only Mr.  
16 Sanchez, and there is a series for each of these  
17 defendants.

18 MR. LOWRY: I guess I'm objecting just to  
19 the scope, the volume of the --

20 THE COURT: Well, there's body shots,  
21 there's close-ups, and everything else here. I  
22 think it's coming in.

23 (The following proceedings were held in  
24 open court.)

25 THE COURT: All right. Mr. Castellano.

1 BY MR. CASTELLANO:

2 Q. Agent Acee, I'm handing you what's been  
3 marked for identification Government's Exhibits 548  
4 through 560. Please look at these exhibits and tell  
5 us if you recognize each of those exhibits.

6 A. I do.

7 Q. Are those a fair and accurate depiction of  
8 the photographs taken on December 3 of 2015?

9 A. They are.

10 Q. And those are photographs of who?

11 A. These are photographs of Daniel Sanchez.

12 MR. CASTELLANO: Your Honor, I move the  
13 admission of Government's Exhibits 548 through 560.

14 THE COURT: Any objection, Ms. Jacks?

15 MS. JACKS: No objection, Your Honor.

16 THE COURT: All right. Government's  
17 Exhibits 548 through 560 will be admitted into  
18 evidence.

19 (Government Exhibits 548 through 560  
20 admitted.)

21 MR. CASTELLANO: With the Court's  
22 permission, I'd like to publish them to the jury.

23 THE COURT: You may.

24 BY MR. CASTELLANO:

25 Q. Beginning with 548 -- and we'll just go

1 sequentially through them. Government's 548, there  
2 is a name and date of birth redacted and the date  
3 12/3 of 2015. So is this consistent with what you  
4 were telling us about doing the roundup and the mass  
5 arrests in December of 2015?

6 A. Yes.

7 Q. The name Daniel Sanchez -- is that the  
8 person you know as Daniel Sanchez from this case?

9 A. It is.

10 Q. And do you see Daniel Sanchez in the  
11 courtroom?

12 A. Yes, sir.

13 Q. Would you please point him out and  
14 identify him for us?

15 A. He's seated to the left of defense  
16 counsel, left side of the courtroom, looks like a  
17 blue suit and bluish-grey shirt with a blue tie.

18 MR. CASTELLANO: Let the record reflect  
19 that Agent Acee has previously identified Mr. Baca,  
20 and has now identified Mr. Sanchez.

21 THE COURT: The record will so reflect.

22 BY MR. CASTELLANO:

23 Q. Turning to Exhibit 549, I want to ask you  
24 about any interpretation or meaning of these  
25 tattoos, Agent Acee. But I want to ask you, as you

1 took photographs or had someone photograph the  
2 people on this occasion, whether you saw common  
3 trends in some of the tattoos.

4 A. Okay.

5 Q. So looking at Exhibit 549, do you see  
6 anything there or similar that you've seen on other  
7 people arrested?

8 A. Yes.

9 Q. Okay. Please start with the first one you  
10 see.

11 A. As you look at the photo, to the left side  
12 of the photo on Mr. Sanchez's right forearm, lower  
13 bicep area, the letter N, and the same location on  
14 the opposite arm, you see the M for New Mexico.

15 Q. Turn to Exhibit 550. Is that focusing on  
16 the hands you told us about previously?

17 A. Yes, sir.

18 Q. Exhibit 551. Same question. Are they --  
19 are you just focusing primarily on the M there?

20 A. Yes.

21 Q. Exhibit 552, I want to draw your  
22 attention -- we may have another photograph in a  
23 second -- the left elbow shown in that picture?

24 A. Yes. There's two things with that. The  
25 Zia that I think we'll see in a subsequent picture,

1 and then up toward the top of the photo, that's  
2 depicting his left shoulder, kind of the front of  
3 his shoulder, the female with the sombrero. That's  
4 often referred to as a chata, and that's a common  
5 tattoo that we see.

6 Q. Turning to Exhibit 553, you mentioned a  
7 Zia symbol earlier. Do you see it better in this  
8 photograph?

9 A. Yes. That depicts Mr. Sanchez's left  
10 elbow.

11 Q. Next is Exhibit 554. What do you see  
12 there that you may have seen on other people  
13 arrested in this case?

14 A. You'll notice now in this photo you can  
15 see on both elbows the Zia symbol, and then  
16 prominently in the center of his back the chata  
17 again.

18 Q. Do you see his name anywhere up there?

19 A. I do. His name starts at the upper left  
20 portion of his back and runs all the way across his  
21 back to his right shoulder. He also has his  
22 hometown tattooed on the back of his neck. It says  
23 "Belen."

24 Q. Belen, of what state?

25 A. New Mexico.

1 Q. Turning to Exhibit 555, anything  
2 additional you see there?

3 A. No.

4 Q. Now turning to Exhibit 556?

5 A. This photo on Mr. Sanchez' right knee,  
6 there is another Zia symbol, and on his left knee I  
7 believe is the outline of the state of New Mexico,  
8 which I think we'll see in a subsequent photo.

9 Q. Exhibit 557?

10 A. In this photo it's of a man wearing a head  
11 band behind prison bars.

12 Q. Next is Exhibit 558.

13 A. This is the one I described just a few  
14 seconds ago, the outline of the state of New Mexico  
15 on his knee and it says "Valencia County," which is  
16 in New Mexico.

17 Q. Turn your attention next to 559.

18 A. In this photo it has the defendant's name,  
19 it says, the left side of his leg.

20 Q. Once again, the name "Sanchez" is on  
21 there?

22 A. Yes, sir.

23 Q. And finally Exhibit 560.

24 A. It's an overall photo of Mr. Sanchez at  
25 the end of the photo session.

1 Q. Earlier, to begin this investigation, we  
2 talked about potential threats against Secretary  
3 Marcantel as well as the STIU head, Mr. Santistevan.  
4 On this occasion, we now have a photograph of Mr.  
5 Sanchez. What can you tell the members of the jury,  
6 why he was arrested on this occasion? In connection  
7 with which charges, I should say.

8 A. Mr. Sanchez was arrested for a violation  
9 of violent crime in aid of racketeering,  
10 specifically for the murder of Javier Molina that  
11 occurred in 2014 down here in Las Cruces, at the  
12 Southern New Mexico Correctional Facility.

13 Q. Now, related to the Javier Molina  
14 investigation, you mentioned earlier that sometimes  
15 you adopt cases and take them from the state system  
16 into the federal system. Do you recall that?

17 A. Yes.

18 Q. What can you tell us about the Javier  
19 Molina murder and whether or not that was a similar  
20 process?

21 A. It was. In that case we weren't adopting  
22 a simple drug or firearm charge; we're actually  
23 adopting a murder, because we had evidence that fell  
24 within the federal racketeering guidelines.

25 Q. And when the Javier Molina murder was

1 first charged, was it charged at the state level?

2 A. It was.

3 Q. Do you remember how many defendants were  
4 initially charged in the Molina murder?

5 A. I think four.

6 Q. To the best of your recollection, who were  
7 those people?

8 A. Jerry Montoya, Jerry Armenta, and Mario  
9 Rodriguez. I hesitated there because I thought  
10 there was some discussion of a fourth defendant, but  
11 it may very well have just been those three.

12 Q. And if you can recall, was Mr. Rodriguez  
13 charged with the murder, or was he charged with  
14 something else in connection with that murder?

15 A. I believe he was charged with tampering  
16 with evidence.

17 Q. As a result of the investigation, then,  
18 were additional people charged in connection with  
19 that murder?

20 A. Yes.

21 Q. Was Mr. Sanchez one of those people?

22 A. He was.

23 Q. I have another set of photographs here  
24 beginning with Exhibits 495, 496, 497, 498, 499,  
25 500, 501, 502, 504, 505, 506 and 507.



1 MR. CASTELLANO: May I approach the  
2 witness, Your Honor?

3 THE COURT: You may.

4 BY MR. CASTELLANO:

5 Q. Agent Acee, same question. I'll ask you  
6 to look at those photographs and see if you  
7 recognize them.

8 A. Yes, sir, I do.

9 Q. How do you recognize them?

10 A. These are photos of Mr. Baca.

11 Q. It's a fair and accurate depiction of  
12 photos taken on December 3 of 2015?

13 A. Yes, they are.

14 MR. CASTELLANO: Your Honor, I move the  
15 admission of those exhibits.

16 THE COURT: Any objection, or anything?

17 MR. LOWRY: No, Your Honor.

18 THE COURT: And I believe from 495 to 507,  
19 the only one that there was a gap was 503; is that  
20 correct?

21 MR. CASTELLANO: There was a gap, Your  
22 Honor. Let me just confirm that for the Court.

23 THE COURT: I don't think there was 503.  
24 So 495 to 507 will be admitted, except there will be  
25 no 503; is that correct?

1 MR. CASTELLANO: I agree, Your Honor. And  
2 with the Court's permission, I'll also publish these  
3 to the jury beginning with Exhibit 495.

4 THE COURT: You may.

5 (Government Exhibits 495 to 502 and 504 to  
6 507 admitted.)

7 BY MR. CASTELLANO:

8 Q. Agent Acee, consistent with what you've  
9 said, there is a name up there and a date of  
10 December 3, 2015. Is this the same situation we had  
11 with Mr. Sanchez earlier?

12 A. Yes.

13 Q. And turn to the next exhibit. What are we  
14 looking at in Exhibit 496?

15 A. We're looking at a side profile of Mr.  
16 Baca's head and neck area, upper shoulders.

17 Q. And what can you tell us about what's near  
18 his left eye?

19 A. It's a Zia symbol with an S in the center  
20 of it.

21 Q. Turning to Exhibit 497, what else do you  
22 see in addition in this photograph?

23 A. In this photograph it depicts Mr. Baca's  
24 neck and upper chest area with several tattoos. The  
25 one in the center of his -- let me back up. Excuse

1 me. On his neck, it says his name, "Baca." Below  
2 that it says "Duke City," which is often referred to  
3 as Albuquerque. And just underneath that you can  
4 start to see what I believe is the Hyatt building.  
5 And we'll see the outline of some of the buildings  
6 in Albuquerque. On his left shoulder is currency,  
7 looks like a \$1,000 bill, and then some other  
8 tattoos.

9 Q. Let's get another view in Exhibit 498.  
10 You mentioned the name Baca. Can you see it better  
11 in this exhibit?

12 A. Yes, sir.

13 Q. As well as the words "Duke City"?

14 A. Yes.

15 Q. And what about the Hyatt building?

16 A. It's in the center of his chest in this  
17 photo. To the left side of the photo, it looks like  
18 someone's ball cap or possibly a hoodie, but you'll  
19 see on the front of it there is an S, as well.

20 Q. And in your investigation of the SNM  
21 prison gang, have you sometimes known them to be  
22 called S for short?

23 A. Yes.

24 Q. Let me turn your attention to 499.

25 A. This is his right shoulder and it's a

1 better depiction of that ball cap, or perhaps it's a  
2 hoodie, but it's a hat of some sort. The person is  
3 wearing a ski mask and holding a pistol with smoke  
4 coming out of the muzzle.

5 Q. Let's take a look at Exhibit 500. In  
6 addition to what you've already testified to, what  
7 are we looking at in what I refer to as his torso or  
8 his stomach area?

9 A. A tattoo -- well, there is a tattoo in the  
10 center, where his solar plexus would be, of a prison  
11 tower. Below that it says "Nuevo Mexico Sindicato."

12 Q. Turning next to Exhibit 501. You  
13 mentioned a prison tower. Can you see it a little  
14 better in this picture?

15 A. Yes. It's towards the top of the photo.

16 Q. If you can go ahead and touch the screen,  
17 you can probably circle that from the witness stand.

18 A. (Witness complies.)

19 Q. Anything else you notice from this  
20 exhibit?

21 A. I previously mentioned the Nuevo Mexico  
22 Sindicato, as I indicated on the screen.

23 MR. CASTELLANO: For the record, the  
24 witness has underlined the words "Nuevo Mexico" and  
25 "Sindicato" and circled the tower on the top of that

1 photograph.

2 Q. Exhibit 502 of the -- I want to draw your  
3 attention to the back of the arm there and see if  
4 you can tell us what that is. If it's easier, I can  
5 show you the -- we're showing this up on the screen.  
6 I can show you a physical copy of the exhibit, if  
7 that helps.

8 A. That might help. There is a glare on here  
9 I'm having trouble seeing.

10 MR. CASTELLANO: May I approach, Your  
11 Honor?

12 THE COURT: You may.

13 A. So in this photo, there are several --  
14 this is depicting Mr. Baca's right arm and his  
15 profile looking at the right side of his body.  
16 There are several tattoos, some of which I've  
17 already described.

18 BY MR. CASTELLANO:

19 Q. Turning to Exhibit 504, can you tell the  
20 members of the jury if this is a common theme you've  
21 seen in some of the people you've arrested in this  
22 case?

23 A. Yes.

24 Q. And for the record, what are we looking at  
25 in this exhibit?

1           A.     We're looking at the back of Mr. Baca's  
2 upper back and shoulders. It's a Mayan or an Aztec  
3 artwork. This is a theme that some of the members  
4 of the SNM have.

5           Q.     Turning to Exhibit 505.

6           A.     This is a closer-up picture of what I just  
7 described, and this is on the upper right side, rear  
8 of Mr. Baca's shoulder.

9           Q.     Now looking at Exhibit 506.

10          A.     This is a photo of Mr. Baca's right hand  
11 with some tattoos.

12          Q.     If you can tell, do you know what that --  
13 on his left thumb, on Exhibit 506, what that is or  
14 what it looks like?

15          A.     It's -- there are different names for it,  
16 but I'll describe the photo first. It's a man in a  
17 hat wearing sunglasses with a handlebar-style  
18 mustache. And it's sometimes -- I've heard it  
19 called, like, a -- I'm drawing a blank on the name.  
20 I'm sorry.

21          Q.     That's okay. Finally, Exhibit 507.

22          A.     This is similar to a photo we looked at  
23 earlier. This is just a profile of Mr. Baca with  
24 his shirt off, showing the front of his body with  
25 his tattoos.

1 Q. The same question as earlier. In the  
2 state case -- was Mr. Baca charged in the state  
3 case?

4 A. He was.

5 Q. In the state case?

6 A. Excuse me, no. Just in the federal case.

7 Q. So was he also an addition to the Molina  
8 murder as a part of your investigation?

9 A. Yes.

10 Q. Next, I'm going to draw your attention to  
11 another set of photographs. Those numbers are  
12 606 -- let me see if there are any gaps here. These  
13 are all sequential. These are Exhibits 606 through  
14 613.

15 MR. CASTELLANO: May I approach, Your  
16 Honor?

17 THE COURT: You may.

18 BY MR. CASTELLANO:

19 Q. Agent Acee, let me show you Exhibits 606  
20 through 618. Do you recognize each of those  
21 photographs?

22 A. I do.

23 Q. And they are photographs of who?

24 A. Jerry Armenta.

25 Q. Are they a fair and accurate depiction of

1 the photos taken on December 3, 2015?

2 A. Yes, sir.

3 MR. CASTELLANO: Your Honor, I move the  
4 admission of Government's Exhibits 608 through 618.

5 THE COURT: Earlier I thought you said  
6 606.

7 MR. CASTELLANO: You are correct, Your  
8 Honor. 606.

9 THE COURT: Any objection from the  
10 Defendants? Not hearing any, Government's Exhibits  
11 606 through 618 inclusive will be admitted into  
12 evidence.

13 (Government Exhibits 606 through 618  
14 admitted.)

15 BY MR. CASTELLANO:

16 Q. I'd like to begin looking at 606. I think  
17 you mentioned the name, but who is this?

18 A. Jerry Armenta.

19 Q. And was Jerry Armenta initially charged in  
20 the Molina murder when it was a state case?

21 A. Yes.

22 Q. Did you bring him into the federal case?

23 A. Yes.

24 Q. Next Exhibit 607. What are we looking at  
25 there?



1           A.     We're looking at Mr. Armenta's lower  
2 chest, upper stomach area. On his stomach he has a  
3 street gang tattoo, NSL, which I believe would be  
4 North Side Locos. Below that you'll see the number  
5 114 with the percent symbol.

6           Q.     Let's turn to 608. I think it's a better  
7 picture of that tattoo there. Can you see that  
8 better?

9           A.     Yes.

10          Q.     Okay. Tell us about that tattoo first.

11          A.     So even more clearly you see it here, NSL.  
12 It says "114 percent," and below his belly button  
13 says "Norteno." These are street gang tattoos that  
14 pertain to -- here, the 114 percent is he's claiming  
15 pride in being a Norteno. I don't want to give you  
16 a long history lesson on California gangs, but this  
17 is an offshoot of a gang from California.

18          Q.     Let me ask you this. Just generally in  
19 this case, when you came across somebody who you  
20 identified as an SNM Gang member, were you also  
21 aware whether or not they previously belonged to a  
22 street gang?

23          A.     Yes. That was one of the first questions  
24 I'd find out from them.

25          Q.     Let's turn to 609. Anything significant

1 in the left arm depicted in this photograph?

2 A. It's a scheme -- a common theme that we're  
3 going to see over and over again: Naked women, guns  
4 and money. And that's what's depicted on the left  
5 arm of Mr. Armenta.

6 Q. And let's look at Exhibit 610.

7 A. In this one there's -- there are a couple  
8 significant tattoos. We're looking at his right  
9 arm. And to the upper left here, you see a prison  
10 tower. Below that there are scrolls. The first one  
11 says 01, 02 -- I think we have 05. These scrolls  
12 are years that the person wearing them fell or those  
13 were years they did time in prison.

14 Q. Exhibit 611?

15 A. This photo depicts the back of Mr.  
16 Armenta's neck, and his moniker is spelled across  
17 it, which is Creeper.

18 Q. During the course of the investigation,  
19 did you come to know Mr. Armenta as Creeper?

20 A. Yes.

21 Q. Exhibit 612?

22 A. This photo depicts the back side of Mr.  
23 Armenta's right ear. It looks like the tattoo says,  
24 "Disavowed."

25 Q. And do you know anything about that

1 tattoo?

2 A. I don't.

3 Q. Looking at Exhibit 613.

4 A. This is Mr. Armenta's left ear, and it  
5 says, "Misunderstood."

6 Q. And have you met Mr. Armenta?

7 A. I have.

8 Q. Have you sat down and interviewed him or  
9 debriefed him?

10 A. Yes.

11 Q. Let's take a look at Exhibit 614.

12 A. This is the top of Mr. Armenta's head.  
13 His head is shaved. You'll see the outline of the  
14 state of New Mexico and the Zia symbol.

15 Q. Once again, are things like NM or the  
16 state of New Mexico or the Zia symbol a common theme  
17 that you have noticed in this case?

18 A. Yes.

19 Q. Again, Exhibit 615. What do we see in  
20 this photograph?

21 A. This is Mr. Armenta's right hand. He's  
22 spreading his fingers, and it looks like his right  
23 middle finger -- I talked about before NSL 14, a  
24 street gang. It looks like he has some other  
25 tattoos that are either too light or he either

1 shaded over in the circle there.

2 Q. All right. Looking next to Exhibit 616.

3 A. This is Mr. Armenta's right leg. You see  
4 the Zia symbol on his knee. Below that, another  
5 reference to a street gang. N-O-R, for north, and  
6 then you can see the 14 at the bottom.

7 Q. Exhibit 617?

8 A. This is Mr. Armenta's left leg.

9 Q. If the other leg said "north," what does  
10 this leg show?

11 A. It spells out side, S-I-D-E.

12 Q. So when you put the two legs together,  
13 what do we get?

14 A. North side.

15 Q. And finally, Exhibit 618.

16 A. So this depicts Mr. Armenta's stomach and  
17 the tattoos that I talked about before, NSL and 14  
18 percent, Norteno.

19 Q. I'm going to turn your attention next to  
20 another set of photographs. These photographs are  
21 numbered 596 through 605.

22 MR. CASTELLANO: May I approach?

23 MS. JACKS: No objection.

24 THE COURT: Any objection from any of the  
25 Defendants?

1 MR. VILLA: No, Your Honor.

2 THE COURT: I assume you're going to move  
3 their admission?

4 MR. CASTELLANO: Yes, sir.

5 THE COURT: All right. Exhibits 596  
6 through 605, with no gaps, inclusive, will be  
7 admitted into evidence.

8 (Government Exhibits 596 through 605  
9 admitted.)

10 BY MR. CASTELLANO:

11 Q. Agent Acee, let's look at Exhibit 596.  
12 Who is that?

13 A. Jerry Montoya.

14 Q. And do you know him from this  
15 investigation?

16 A. I do.

17 Q. And have you had a chance to sit down and  
18 interview him or debrief him?

19 A. Yes.

20 Q. Was he one of the original defendants from  
21 the state case involving Mr. Molina?

22 A. Yes.

23 Q. Let's turn to the next exhibit. 597.

24 A. This photo depicts Mr. Montoya with his  
25 shirt off. He has the initials JR on his chest,

1 which is a nickname he goes by. His father had the  
2 same name, so he's a junior.

3 Q. From that photograph, are those boxing  
4 gloves?

5 A. Yes.

6 Q. What other names do you know Mr. Montoya  
7 by?

8 A. Plaz, P-L-A-Z, or double Z; Plazi, or JR.

9 Q. Turning next to 598.

10 A. This photo is the forearm of Mr. Montoya  
11 at the top. There's a couple of things I'll note.  
12 The first is a peacock. Below that, the name of his  
13 street gang, San Jo, or San Jose.

14 Q. So you mentioned the term or the words San  
15 Jo. Is that short for San Jose?

16 A. Yes, sir.

17 Q. What do you know about that gang or that  
18 area?

19 A. That's a neighborhood in Albuquerque.  
20 It's a street gang that's been around for a long  
21 time.

22 Q. Let's turn to the next exhibit, please.  
23 599. Anything significant you see in this  
24 photograph?

25 A. No.

1 Q. The next, Exhibit 600.

2 A. This is the back side of his forearm. He  
3 has "east."

4 Q. If he has "east," let's turn then to 601.

5 A. On his right forearm he has "side."

6 Q. Once again, when you put the two together  
7 you get "east side"?

8 A. Yes. The San Jose street gang is split  
9 into two: An east side and a west side.

10 Q. Turning to Exhibit 602.

11 A. This is Mr. Montoya's back, his shirt off.  
12 At the base of his neck he has "San Jose." He has  
13 the same thing in letters across his lower back, and  
14 then we can start to see the Zia symbol here with an  
15 S in it.

16 Q. For the record, you circled the right side  
17 of his neck; is that correct?

18 A. Yes.

19 Q. Let's go ahead and turn, then, to Exhibit  
20 603.

21 A. That's a closer-up photo. You see the Zia  
22 symbol with the S shaded out inside.

23 Q. The same thing? This is a common theme  
24 you've seen?

25 A. Yes, sir.

1 Q. 604.

2 A. It's the same photo, just a little closer  
3 up.

4 Q. And 605?

5 A. This would be Mr. Montoya's out photo,  
6 we'll call it, after all the photos were taken.

7 Q. Showing us a smile?

8 A. Seems like he's always smiling.

9 Q. And so for someone like Mr. Montoya -- and  
10 when you talked about arresting people, where was he  
11 when you grabbed him and took him from the State and  
12 brought him to federal court?

13 A. He was one of the people arrested at the  
14 facility up in Santa Fe. So he was up at PNM. He  
15 was extracted during the lockdown, and then  
16 transported down to our processing center in  
17 Albuquerque.

18 Q. I'm going to show you another set of  
19 photographs beginning with 586. These are Exhibits  
20 586 through 595.

21 MS. JACKS: Again, Your Honor, there is no  
22 objection.

23 THE COURT: Any objection from any of the  
24 Defendants?

25 MR. VILLA: No objection.



1 MR. BALL: No, Your Honor.

2 THE COURT: All right. We'll admit  
3 Government's Exhibits 586 through 595, without gaps,  
4 inclusive.

5 (Government Exhibits 586 through 595  
6 admitted.)

7 BY MR. CASTELLANO:

8 Q. Let's begin with 586, please. Who is  
9 that?

10 A. Mario Rodriguez.

11 Q. Do you know him by any other names from  
12 this investigation?

13 A. He uses the moniker Blue.

14 Q. The same thing. This has a date on here  
15 of December 3, 2015. Is this the same date as the  
16 other people arrested?

17 A. Yes.

18 THE COURT: Mr. Castellano, would this be  
19 a good time for us to take our lunch break before  
20 you get too far into Mr. Rodriguez's pictures?

21 MR. CASTELLANO: Yes, sir.

22 THE COURT: All right. Since we're going  
23 to be taking our first lunch break during the trial,  
24 I'm going to remind you of a few things that are  
25 especially important. Until the trial is completed,

1 you're not to discuss this case with anyone, whether  
2 it's members of your family, people involved in the  
3 trial, or anyone else. And that includes your  
4 fellow jurors. If anyone approaches and tries to  
5 discuss the trial with you, please let me know about  
6 it immediately.

7 Also, you must not read or listen to any  
8 news reports of the trial. Again, don't get on the  
9 internet and do any research for purposes of this  
10 case. And finally, remember that you must not talk  
11 about anything with any person who is involved in  
12 the trial, even if it doesn't have anything to do  
13 with the trial.

14 If you need to speak with me, simply give  
15 a note to one of the court security officers or Ms.  
16 Standridge. Again, I'm going to repeat these today  
17 and we'll start dropping them off tomorrow. But do  
18 keep them in mind each time we take a break.

19 All right. We'll be in recess for about  
20 an hour so have a good lunch. All rise.

21 (The jury left the courtroom.)

22 THE COURT: Anything before we take our  
23 lunch break? All right. Have a good lunch. See  
24 you in about an hour.

25 (Court was in recess.)

1 THE COURT: All right. Let's go on the  
2 record before we bring the jury in.

3 MS. FOX-YOUNG: I think you had something  
4 that you wanted to try to raise before we brought  
5 the jury in?

6 MS. FOX-YOUNG: Thank you, Your Honor.

7 THE COURT: Ms. Fox-Young.

8 MS. FOX-YOUNG: Your Honor, in the last  
9 hour I had the opportunity to briefly review the  
10 Government's response to the motion that Mr. Lowry  
11 filed to strike witnesses. I don't know the  
12 document number. But all Defendants joined. The  
13 Government's response is Document 172, I believe.

14 THE COURT: Hold on just a second. Are  
15 they ready?

16 THE CLERK: Yes.

17 THE COURT: Well, you said it could wait.  
18 Can I take you up on that?

19 MS. FOX-YOUNG: It can wait.

20 THE COURT: All right. You can talk to me  
21 while she's getting the jury. I thought they were  
22 ready. Not yet.

23 MS. FOX-YOUNG: So the Government's  
24 response, Document 1725, says on page 6, "The U.S.  
25 has disclosed Brady and Giglio material as timely as

1 possible. The latest information that was provided  
2 was not in the custody of the Government prior to  
3 production, and were provided as timely as  
4 possible."

5 This Court has also received pleadings --  
6 there was one filed by Mr. Castle that attached some  
7 302s. One in particular was produced within -- and  
8 there are many examples. I'm going to give the  
9 Court one example. It's Bates 41707. It's a Billy  
10 Cordova 302 regarding a July 14, 2016, interview, in  
11 which he talks about helping to murder a Los  
12 Carnales gang member, dumping the body in San Jose,  
13 in Albuquerque. He refers to lengthy  
14 drug-trafficking history and an autobiography of  
15 that drug-trafficking history that he was to  
16 provide. The Government has had this for a year and  
17 a half. Mr. Castellano and Mr. Armijo were at that  
18 meeting.

19 THE COURT: All right. All rise.

20 (The jury entered the courtroom.)

21 THE COURT: All right. Be seated.

22 Good afternoon, everyone. I appreciate  
23 you being back and on time ready to go. I think  
24 we're even a minute or so early. I appreciate  
25 everybody working and trying to stay on schedule.

1 Mr. Castellano, if you wish to continue  
2 the direct examination of Mr. Acee.

3 Mr. Acee, I'll remind you that you're  
4 still under oath.

5 THE WITNESS: Yes, sir.

6 THE COURT: Mr. Castellano.

7 MR. CASTELLANO: Thank you, Your Honor.

8 BY MR. CASTELLANO:

9 Q. We're pulling up the next set of pictures,  
10 I believe, starting with Government's 586. I'm  
11 going to use the visualizer. While the computer is  
12 starting up again, Agent Acee, this is Government's  
13 Exhibit 586. Who is this?

14 A. Mario Rodriguez.

15 Q. And the same question as usual: There is  
16 a date of December 3, 2015. Is that the same date  
17 as the roundup of the other people?

18 A. Yes.

19 Q. I think you testified earlier -- was it  
20 your belief that Mr. Rodriguez was charged only with  
21 tampering with evidence at the state level?

22 A. Yes.

23 Q. And once this became a federal case, was  
24 he then charged with the Molina murder?

25 A. Yes.

1 Q. Showing you Exhibit 587, once again, what  
2 can you tell us about what you see in this photo  
3 regarding tattoos?

4 A. Across Mr. Rodriguez's abdomen is his  
5 moniker, "Blue." In between the L and the U is the  
6 state of New Mexico outline that says "Silver City,  
7 NM."

8 Q. And what's your understanding about why  
9 there is a "Silver City" in the NM?

10 A. That's where he's from, and the street  
11 gang that he belonged to is in Silver City.

12 Q. Once again, you referenced a street gang.  
13 So is it your understanding that he was a member of  
14 the street gang before he was an SNM Gang member?

15 A. Yes.

16 Q. Anything else from that photograph?

17 A. I think it's better depicted in subsequent  
18 photographs, but you can see at his neck he has  
19 writing there, and I believe that's the name of his  
20 street gang.

21 Q. Turning to Exhibit 588.

22 A. This is a closer photo of Mr. Rodriguez'  
23 abdomen with his moniker and the New Mexico tattoo.

24 Q. Looking at Exhibit 589.

25 A. We're looking at Mr. Rodriguez' left arm.

1 You see on his -- just below his wrist he has an  
2 "ES" for "east side." That's the street gang that  
3 he's part of.

4 Q. For the record, I'm circling something on  
5 his wrist. Is that what you were referring to for  
6 the "ES"?

7 A. Yes.

8 Q. Turning to Exhibit 590, what, if anything,  
9 can you tell from this photograph?

10 A. I see that it looks like he covered up  
11 some tattoos there, but I'm not seeing anything of  
12 significance.

13 Q. If you can from this photograph, can you  
14 see anything on his hand?

15 A. I do see a tattoo on his hand. I can't  
16 quite make out what it is.

17 Q. Looking at Exhibit 591.

18 A. That's a close-up of his left inner  
19 forearm. Among the different designs there, I see  
20 some prison bars here where I'm circling.

21 Q. I'm now showing you Exhibit 592. Are you  
22 able to make out anything from this photograph?

23 A. There is writing on the middle finger of  
24 his left hand, but it's too blurry.

25 Q. Looking at Exhibit 593.

1           A.     This is a similar to a photo I talked  
2 about earlier where he has "ES" on his left hand.

3           Q.     And 594?

4           A.     This is the back of Mr. Rodriguez' head.  
5 He has a tattoo on his scalp. It looks like it says  
6 "SC." I'm trying to go off memory of times I've had  
7 a closer look at it, but I don't recall what it is.  
8 And it's not clear in this photo, but I believe the  
9 circle here says "Silver City," but I'm going off  
10 memory of conversations.

11          Q.     You said conversations. Have you had a  
12 chance to meet with him and interview him?

13          A.     I have.

14          Q.     Exhibit 595.

15          A.     In this photo it depicts Mr. Rodriguez.  
16 He's holding up his shorts, so it's a photo of his  
17 legs, that have several tattoos on them. You'll see  
18 on the left thigh -- I'll circle it -- there is a  
19 large Zia symbol.

20               MR. CASTELLANO: Now, turning to exhibits  
21 beginning with 561. These are Exhibits 561 through  
22 567.

23               MS. JACKS: No objection, Your Honor.

24               MR. VILLA: No objection.

25               MR. BALL: No objection.



1 THE COURT: All right. Not hearing any  
2 objection, Government's Exhibits 561 to 567 will be  
3 admitted into evidence.

4 (Government Exhibits 561 through 567  
5 admitted.)

6 BY MR. CASTELLANO:

7 Q. Agent Acee, I'm showing you Exhibit 561.  
8 Who is that?

9 A. Timothy Martinez.

10 Q. Was he arrested the same day as the  
11 others?

12 A. Yes.

13 Q. Where was he when you arrested him, or  
14 some member of the team?

15 A. He was up at the Penitentiary of New  
16 Mexico, PNM North facility in Santa Fe.

17 Q. Showing you Government's Exhibit 562.

18 A. This is a photo of Mr. Martinez's torso.  
19 He has his arms extended.

20 Q. I'm showing you Government's Exhibit 563.

21 A. I don't see any gang-specific tattoos.

22 Q. I'm now showing you Exhibit 564. Let me  
23 zoom out a little bit.

24 A. That is Mr. Martinez's upper back. You'll  
25 see that it says "Silver City" in the center where

1 he is from, and then the outline of the state of New  
2 Mexico and it says "Nuevo Mexico." I just noticed  
3 as you were pulling away, sir, it looked like there  
4 was some Mayan -- some of the Aztec stuff that I  
5 referred to earlier, theme, kind of starting here  
6 and going down the right half of his back.

7 Q. So for the record, you're showing the back  
8 of his right arm, shoulder, and down the right side  
9 of his back; isn't that correct?

10 A. Yes, sir.

11 Q. And is Timothy Martinez known by any other  
12 names from this investigation?

13 A. He uses the moniker Red.

14 Q. I'm showing you Exhibit 565.

15 A. This is Mr. Martinez's left leg. The  
16 photo starts at the knee. You'll see the Zia symbol  
17 here with the letter M in it. Below that, the  
18 outline of the state of New Mexico. Within the Zia  
19 symbol you'll see the numbers 575, the area code  
20 down here in southern New Mexico.

21 Q. Let me skip ahead one to -- actually, let  
22 me go ahead and show you 566.

23 A. This is the left calf area of Mr.  
24 Martinez. And of significance is the peacock that  
25 you see on his calf. I've circled it. Some SNM

1 members maintain that that bird is a symbol that's  
2 identified with the S. Other members have told me  
3 that it's not.

4 Q. I can't tell from here. Is that a peacock  
5 or a roadrunner on that tattoo?

6 A. I'm not a bird expert, but I guess it  
7 could be a roadrunner.

8 Q. But you have mentioned a peacock. Have we  
9 already seen earlier this morning at least one  
10 tattoo with a peacock?

11 A. We did.

12 Q. Now, turning to Exhibit 567. We saw the M  
13 earlier.

14 A. So you have the other kneecap, where it  
15 has the N within the Zia, for New Mexico.

16 Q. Looking down here on the right kneecap in  
17 the photograph, can you tell what that is from the  
18 photograph?

19 A. First I thought it was a prison tower.  
20 I'm just hesitating because it stays kind of wide  
21 down here, so it almost looks like an Asian thing,  
22 which would go with some of the letters or  
23 characters you see on his leg. So I'm not confident  
24 that that's a prison tower.

25 Q. I'm going to turn your attention to a set

1 of photographs beginning with Government's Exhibit  
2 636.

3 MR. CASTELLANO: These are Exhibits 636  
4 through 643.

5 MS. JACKS: Again, no objection, Your  
6 Honor.

7 MR. VILLA: No objection.

8 MR. MAYNARD: No objection.

9 MR. LOWRY: No objection.

10 THE COURT: And you're moving their  
11 admission, Mr. Castellano?

12 MR. CASTELLANO: Yes, Your Honor.

13 THE COURT: Government's Exhibits 636  
14 through 643, without gap, inclusive, will be  
15 admitted into evidence.

16 (Government Exhibits 636 through 643  
17 admitted.)

18 BY MR. CASTELLANO:

19 Q. Agent Acee, let me begin with Exhibit 636.  
20 Even though there is a name up there, who is that  
21 person?

22 A. David Calbert.

23 Q. Same date of arrest?

24 A. Yes.

25 Q. Now, can you tell the members of the jury

1 whether or not David Calbert was initially charged  
2 with any participation in the Molina murder?

3 A. No, he was not.

4 Q. Can you tell the members of the jury  
5 whether he is now in some way tied to the Molina  
6 murder?

7 A. Yes, he is.

8 Q. So as this investigation continued, is it  
9 fair to say he was not initially charged with that  
10 conduct?

11 A. No, he was not charged with the Molina  
12 murder. He was charged with different racketeering  
13 activity.

14 Q. What was he charged with, if you remember?

15 A. Violent crime in aid of racketeering,  
16 assault causing great bodily injury, and I believe  
17 there was a second count of violent crime in aid of  
18 racketeering, attempted murder.

19 Q. Let's look at Exhibit 637. What do you  
20 notice from his tattoos there?

21 A. A couple things. You'll notice on his  
22 chin there is an S. There is also a Zia symbol with  
23 an SNM here on the lower part of his throat. Across  
24 his stomach here he has the name "Spider." That's  
25 his moniker.

1 Q. Turning to Exhibit 638.

2 A. This is a close-up view of Mr. Calbert's  
3 chin with that S, and then the S on his throat,  
4 inside the Zia.

5 Q. Let's look to Exhibit 639.

6 A. That's a close-up photo of his moniker  
7 "Spider" on his stomach.

8 Q. And Exhibit 640?

9 A. It's another shot of the S that's on his  
10 neck.

11 Q. Now looking at Exhibit 641.

12 A. These are just spider webs. Because his  
13 moniker is Spider, it makes sense he has them. They  
14 used to be identified with -- people that have done  
15 time would have spider webs, but people buy that in  
16 tattoo shops, now, too, so it's lost its  
17 significance.

18 Q. So let's look at 643 next.

19 A. On the back of Mr. Calbert's neck is his  
20 name and his NMCD number.

21 Q. And when you say NMCD, what is NMCD?

22 A. That's his identification number for the  
23 Department of Corrections.

24 Q. All right. What about the tattoo across  
25 his shoulder blades?

1 A. So that says, "Trust no bitch."

2 Q. Now, looking at Exhibit 643.

3 A. This is another close-up photo of the  
4 tattoo on his chin and his neck.

5 Q. And what is the tattoo on his chin?

6 A. The letter S.

7 Q. I discussed earlier about Mr. Calbert --  
8 was he also not charged with the Molina murder when  
9 it was a state case?

10 A. He was not.

11 MR. CASTELLANO: The next set of photos  
12 begin with Exhibits 568 through 573.

13 MS. JACKS: No objection, Your Honor.

14 THE COURT: Anyone else?

15 MR. MAYNARD: No objection.

16 MR. VILLA: No objection, Your Honor.

17 THE COURT: Not hearing any objection,  
18 Government's Exhibits 568 through 573 without gap,  
19 inclusive, will be admitted into evidence.

20 (Government Exhibits 568 through 573  
21 admitted.)

22 BY MR. CASTELLANO:

23 Q. Let's begin with Exhibit 568, please. Who  
24 is this person, Agent Acee?

25 A. Roy Martinez.

1 Q. The same arrest date as the others?

2 A. Yes.

3 Q. How was Mr. Martinez implicated in this  
4 case, or what was he charged with?

5 A. Mr. Martinez was charged with racketeering  
6 violations related to the conspiracy to kill Gregg  
7 Marcantel and Dwayne Santistevan.

8 Q. Now, you previously mentioned that  
9 somebody -- I think Eric Duran -- turned over  
10 letters to corrections officials?

11 A. Yes.

12 Q. Can you tell the members of the jury  
13 whether any of those letters were authored by Mr.  
14 Martinez?

15 A. Yes.

16 MR. LOWRY: Objection. Calls for hearsay.

17 THE COURT: Why don't you lay a foundation  
18 how he knows this information before he testifies  
19 about it.

20 BY MR. CASTELLANO:

21 Q. Have you had a chance to read any of those  
22 letters?

23 A. All of them.

24 Q. And do any of those letters claim to be  
25 written by someone named Roy Martinez?



1 A. Yes.

2 Q. Let's take a look at Exhibit 569.

3 A. In this photograph we see Mr. Martinez's  
4 chest and abdomen. I'm circling a Zia in which the  
5 letters SNM are listed.

6 Q. What does SNM stand for?

7 A. It's the New Mexico syndicate, or  
8 Sindicato de Nuevo Mexico.

9 Q. And on the various tattoos you've seen  
10 throughout this case, does the word "syndicate" or  
11 "sindicato" -- have you seen it spelled different  
12 ways?

13 A. Yes.

14 Q. What ways have you seen it spelled?

15 A. Well, "syndicate" is spelled the standard  
16 English way you would spell it. "Sindicato" I have  
17 seen spelled with both a Y and an I. I have seen  
18 the Corrections Department spell it that way, both  
19 ways. And I have seen members of the SNM spell it  
20 both ways on tattoos on their body. So it seems to  
21 just be a preference.

22 Q. So the first two letters, either S-I or  
23 S-Y?

24 A. Correct.

25 Q. Let's take a look at 570.

1           A.     This is a closer-up photo of Mr. Martinez '  
2 stomach. It depicts a Zia with the SNM. To the  
3 right of that in the photo, it looks like it says  
4 "West Side Locos," with a 16. Off the top of my  
5 head, I don't remember what street gang he grew up  
6 in, but I know the West Side Locos to be a street  
7 gang.

8           Q.     When you say West Side Locos, are we  
9 looking at three letters, W-S-L?

10          A.     Yes.

11          Q.     We're looking at 571. What else do you  
12 notice about the tattoos in this exhibit?

13          A.     Well, in this one I see Mr. Martinez.  
14 He's holding his arms out so we can see part of his  
15 bicep. Then down his forearms. It looks like he  
16 has a Zia on his left arm, and he covered up some  
17 other tattoos below that. On his other arm I don't  
18 see anything of significance.

19          Q.     And throughout this investigation, by what  
20 other name or names have you known Roy Martinez?

21          A.     Shadow or Big Shadow.

22          Q.     Looking at Exhibit 572.

23          A.     This is Mr. Martinez with his shirt off,  
24 and you'll see on his upper right shoulder on the  
25 back he has a tattoo of a home boy and it says

1 "Shadow" above it.

2 Q. And then Exhibit 573?

3 A. This is Mr. Martinez' out photo.

4 Q. Have you had a chance to visit with Mr.  
5 Martinez and interview him?

6 A. I have.

7 Q. And is he cooperating in relation to the  
8 Gregg Marcantel and Dwayne Santistevan part of this  
9 investigation?

10 A. Yes.

11 MR. CASTELLANO: Okay. I'm looking next  
12 at the exhibits beginning with Exhibit 574 through  
13 580.

14 MS. JACKS: No objection. Your Honor.

15 MR. VILLA: No objection.

16 MR. LOWRY: No objection.

17 MR. MAYNARD: No objection.

18 THE COURT: Government's Exhibits 574  
19 through 580, inclusive, without gap, are admitted  
20 into evidence.

21 (Government Exhibits 574 through 580  
22 admitted.)

23 BY MR. CASTELLANO:

24 Q. And beginning with Exhibit 574, who are we  
25 looking at?

1 A. Robert Martinez.

2 Q. And was he arrested on the same date?

3 A. Yes.

4 Q. Was he in prison at that time?

5 A. He was.

6 Q. Let's look at 575.

7 A. In this photo, Mr. Martinez' chest and  
8 arms are exposed with several tattoos. It looks  
9 like he covered up some tattoos in this area, but I  
10 don't see anything of significance.

11 Q. Let's then turn to 576. Anything of  
12 significance there that stands out?

13 A. No, sir.

14 Q. Exhibit 577.

15 A. This is Mr. Martinez' -- the underside of  
16 his left arm, starting at his armpit and running  
17 down his forearm. He has the letters SNM on his  
18 tricep area.

19 Q. Has he self-identified as an SNM Gang  
20 member?

21 A. Yes.

22 Q. 578.

23 A. That's a closer view of that same photo.

24 Q. Then Exhibit 579. Do you see anything  
25 there?

1 A. No, sir.

2 Q. Finally, Exhibit 580.

3 A. No, sir.

4 Q. Now, how is Mr. Martinez, Robert Martinez,  
5 implicated in this case?

6 A. He was charged in the  
7 Marcantel-Santistevan conspiracy, as well as another  
8 violent-crime-in-aid- of-racketeering assault that  
9 took place.

10 Q. What was he alleged to have done when it  
11 comes to the Marcantel-Santistevan conspiracies?

12 A. He authored letters that were sent out to  
13 the street to members on the street to hit Marcantel  
14 and Santistevan.

15 Q. What about the assault?

16 A. In the assault he and another member  
17 paired up to assault an SNM member that had  
18 disrespected Baby Rob, or Mr. Martinez.

19 Q. Let me turn your attention then to  
20 Government 581 through 585.

21 MS. JACKS: No objection.

22 MR. VILLA: No objection.

23 MR. LOWRY: No objection.

24 MR. MAYNARD: No objection.

25 THE COURT: And assuming you're going to

1 move their admission, Government's Exhibits 581  
2 through 585 will be admitted into evidence.

3 (Government Exhibits 581 through 585  
4 admitted.)

5 MR. CASTELLANO: Thank you, Your Honor.

6 BY MR. CASTELLANO:

7 Q. Okay. Beginning with Exhibit 581, who is  
8 that?

9 A. Gerald Archuleta.

10 Q. Now, I notice in this exhibit there is a  
11 different date of April 28, 2016.

12 A. Yes.

13 Q. So I want to pause there for a moment and  
14 ask you, you mentioned phase 1 of this prosecution  
15 or the investigation was in December of 2015. So  
16 what happened between that time and the time that we  
17 have photographs of Mr. Archuleta?

18 A. We continued our investigation, continued  
19 collecting evidence, and then myself and the other  
20 agents assigned to the case went back to the federal  
21 grand jury, provided testimony, secured indictments  
22 and arrest warrants for phase 2 defendants. Similar  
23 to phase 1, we put together operational plans,  
24 search warrants, and did another large-scale law  
25 enforcement takedown around New Mexico and elsewhere

1 early in the morning.

2 Q. All right. So looking at Exhibit 581,  
3 where was Mr. Archuleta when he was arrested?

4 A. He was in Tennessee.

5 Q. And was he in or out of prison at that  
6 time?

7 A. He was out. He had a house, had a job,  
8 living on the street -- excuse me, not living on the  
9 street, but on the street.

10 Q. And if you recall, do you remember how  
11 long he'd been out of prison?

12 A. More than a couple years. I don't  
13 remember the exact time. But he did his parole  
14 time. He transferred his parole out to Tennessee,  
15 and successfully completed it out there.

16 Q. Looking at the next exhibit, 582.

17 A. This is a photo of Mr. Archuleta with his  
18 shirt off depicting the front of his body.

19 Q. At some point in time, was Mr. Archuleta  
20 known to be a leader of the SNM Gang?

21 A. Yes. I think we'll capture it in another  
22 photo, but if you look at the top of his pants, it  
23 will say "Nuevo Mexico" there. You can just make it  
24 out.

25 Q. We may or may not have one of those, but

1 let's turn to 583. Anything of significance stand  
2 out in that exhibit?

3 A. No.

4 Q. Okay. Turn to Exhibit 584.

5 A. We might disagree on the bird, but I see  
6 two peacocks at the top of his shoulders there, and  
7 then on the back of his neck it says "Lilly."

8 Q. So no roadrunners in this picture?

9 A. No what?

10 Q. No roadrunners in this picture? Peacocks?

11 A. Not in my opinion, no.

12 Q. Exhibit 585.

13 A. On his right shoulder he has the name  
14 Lilly S. I only mention that it's not a gang  
15 tattoo, but someone in their opening -- I think it  
16 was Ms. Armijo -- actually talked about the  
17 controversy and the civil war in the SNM. This is  
18 the lady it ends up being over.

19 Q. We'll probably hear from other witnesses,  
20 but was that issue a point of contention within the  
21 gang?

22 A. Well, it was a point of contention between  
23 these two guys, and they politicked to make it a  
24 point of contention in the gang.

25 Q. You mentioned two guys. Who were the two



1 guys?

2 A. Gerald Archuleta and Julian Romero.

3 Q. And for what charge was Mr. Archuleta  
4 arrested?

5 A. Violent crime in aid of racketeering. I'm  
6 only hesitating because there were three charges I  
7 thought were applicable. But in the end, I think  
8 all that ultimately he was held responsible for was  
9 the violent-crime-in-aid-of-racketeering attempt to  
10 commit assault resulting in great bodily injury.

11 Q. And who was the victim of that assault?

12 A. Julian Romero.

13 Q. Turning to Government's Exhibit 628  
14 through 635.

15 MS. JACKS: No objection, Your Honor.

16 MR. VILLA: No objection.

17 MR. LOWRY: No objection, Your Honor.

18 MR. MAYNARD: No objection.

19 THE COURT: All right. Assuming the  
20 Government is moving the admission, Government's  
21 Exhibits 628 through 635 inclusive and without gap  
22 are admitted into evidence.

23 (Government Exhibits 628 through 635  
24 admitted.)

25 MR. CASTELLANO: Thank you, Your Honor.

1 BY MR. CASTELLANO:

2 Q. Beginning with Exhibit 628, who is this  
3 person?

4 A. Manuel Jacob Armijo.

5 Q. And I see once again the date of April 28,  
6 2016, on there?

7 A. Yes.

8 Q. Was this, then, part of the phase 2?

9 A. It was.

10 Q. And when phase 2 happened, were additional  
11 charges brought against additional defendants in  
12 that next phase of the operation?

13 A. Yes.

14 Q. And so can you tell the jury, in addition  
15 to the people in court today, were there other  
16 members charged and other members still pending  
17 trial?

18 A. Yes. Should I stop there?

19 Q. Yes. And is Mr. Armijo known by any other  
20 names?

21 A. Big Jake.

22 Q. Let's turn to the next exhibit, 629.

23 A. This is Mr. Armijo's right arm. On the  
24 back side of his arm you see the prison tower with  
25 the gate and the barbed wire. Just below that a Zia

1 with an S in it.

2 Q. All right. Turning to Exhibit 630.

3 A. Nothing on that one.

4 Q. Next is Exhibit 631.

5 A. This tattoo that I'm circling that has the  
6 paw print and then it says MEX, M-E-X. To me, this  
7 is a tattoo that signifies not only New Mexico but  
8 Albuquerque, given the reference to what I recognize  
9 to be to the Lobos.

10 Q. What's at the bottom of his arm?

11 A. It's a Zia symbol, and if I remember  
12 correctly, inside that there is the letter S. I  
13 think we'll have another image of it.

14 Q. Turning to Exhibit 632, what do we see  
15 there?

16 A. So in this photo a couple of things.  
17 Across his lower stomach is Barelás, which is an  
18 older neighborhood in Albuquerque, and is one of the  
19 older street gangs in New Mexico. A lot of the  
20 founding members of the SNM are from that  
21 neighborhood, as is Mr. Armijo. Then you start to  
22 make out -- looks like on his left arm, which is  
23 depicted on the right side of the photo, it looks  
24 like he covered up some tattoos here. And then  
25 there is another Zia symbol below that.

1 Q. Let's go ahead and turn to 633, then, to  
2 get a better look.

3 A. So the Zia symbol I was referencing is  
4 shown in this photo, and it's got the S in the  
5 center.

6 Q. And 634?

7 A. It's the same thing.

8 Q. Exhibit 635?

9 A. This is Mr. Armijo's back. See on the  
10 back of his right tricep the Zia with the S.

11 Q. If you recall, what was Mr. Armijo charged  
12 with?

13 A. RICO Act conspiracy, Racketeer Influenced  
14 and Corrupt Organizations Act conspiracy.

15 Q. And was he charged in a separate  
16 indictment than the gentlemen in court? It was a  
17 RICO conspiracy?

18 A. Two of the gentlemen in court were charged  
19 with that as well.

20 Q. Let me ask you in that indictment, was  
21 there any allegation against Mr. Armijo regarding a  
22 murder in the overt acts of that indictment?

23 A. Yes.

24 Q. And was that indictment later superseded  
25 or changed in any way regarding that murder?

1 A. Yes.

2 Q. And what happened with the murder charge  
3 in which he was implicated between the first  
4 indictment and the second indictment in his case?

5 A. It was -- those overt acts were dropped  
6 because we determined that --

7 MS. JACKS: Objection, hearsay.

8 THE COURT: Are you trying to elicit this  
9 out-of-court?

10 MR. CASTELLANO: I am, Your Honor.

11 THE COURT: Why don't y'all approach on  
12 this.

13 (The following proceedings were held at  
14 the bench.)

15 THE COURT: What is he going to say?  
16 What's he about to say?

17 MR. CASTELLANO: I think what he's going  
18 to say is that the further investigation revealed  
19 that he was not involved with that and therefore the  
20 charge was removed.

21 MS. JACKS: I think that's a conclusion  
22 based on hearsay, and it's irrelevant.

23 THE COURT: Well, but if it's his  
24 conclusion from his investigation, I don't think  
25 it's hearsay. If he did the investigation and

1 concluded --

2 MS. JACKS: The investigation was based on  
3 interviewing people.

4 THE COURT: Well, he interviewed people,  
5 but he made the determination. Overruled.

6 MS. DUNCAN: Your Honor, I'd like to move  
7 for a mistrial based on Bryan Acee announcing to the  
8 jury that two of the defendants are being charged in  
9 another case not before the jury. That is was  
10 improper.

11 THE COURT: These other defendants --

12 MS. DUNCAN: There are two people in this  
13 room that have been charged in another case, is what  
14 he said; which now these jurors are aware of another  
15 case pending against two of them. So on that  
16 ground, I would ask for a mistrial.

17 THE COURT: Well --

18 MR. VILLA: I want to join on behalf of  
19 Mr. Perez, because the testimony was that two of the  
20 defendants were joined, charged, in another  
21 indictment. It's not clear who. So it leaves the  
22 impression that it could be Mr. Perez.

23 THE COURT: Can you clear it up, and can  
24 you somehow eliminate this thing with Baca being in  
25 the other cases?

1 MR. CASTELLANO: When he first said it, I  
2 noticed the comment, and quickly moved to another  
3 subject to try to minimize that. But I did notice  
4 the comment, which was not intended to be elicited.

5 THE COURT: Why don't you tell him you're  
6 going to come back to it and clear up that none of  
7 the men in this case are charged in other cases, and  
8 just get an answer from him.

9 MS. JACKS: Mr. Sanchez joins in the  
10 objection, and I also think it's probably  
11 inappropriate for Mr. Castellano to tell Agent Acee  
12 to come back to court and testify to something  
13 that's not true.

14 MR. CASTELLANO: I agree. He can't do  
15 that. So the question is what we can do to minimize  
16 that or shape his testimony to minimize or gloss  
17 over that.

18 MR. LOWRY: That horse has left the barn.

19 THE COURT: Do this: Minimize it by  
20 saying, "Let's clear up right now, Mr. Sanchez is  
21 not charged in any other cases; Mr. Perez is not  
22 charged in any other case; Mr. Herrera is not  
23 charged in any other case," and move on.

24 MS. JACKS: I would object to that as a  
25 solution because it's instructing him to elicit

1 false evidence.

2 THE COURT: It's not false evidence.

3 MS. JACKS: It's not true. Mr. Sanchez is  
4 charged in another case, and referred to by Agent  
5 Acee.

6 THE COURT: Well, clear it up as to the  
7 ones that are truthful.

8 MS. JACKS: That's going to highlight it  
9 all the more to Mr. Sanchez.

10 THE COURT: Make up your mind. Move on.

11 MS. JACKS: Move for a mistrial.

12 THE COURT: That's denied. What do you  
13 want? Do you want this testimony or not?

14 MS. JACKS: I don't want anything further  
15 on behalf of Mr. Sanchez. Let's go back to our  
16 chairs. The other Defendants may feel differently.

17 THE COURT: Go back to your chairs.

18 (The following proceedings were held in  
19 open court.)

20 THE COURT: Mr. Castellano.

21 BY MR. CASTELLANO:

22 Q. Now, Agent Acee, you had earlier talked  
23 about the use of informants. And as a result of the  
24 use of informants, can you tell the members of the  
25 jury whether Mr. Herrera and Mr. Perez were added to



1 the Molina murder?

2 A. Yes, they were.

3 Q. So beginning with Exhibits 539 through  
4 547, I'll approach in a second.

5 MR. VILLA: No objection from Mr. Perez.

6 MS. JACKS: No objection.

7 MR. LOWRY: No objection.

8 MR. MAYNARD: No objection.

9 THE COURT: All right. Government's  
10 Exhibit 539 through 547, without gap, inclusive,  
11 will be admitted into evidence.

12 (Government Exhibits 539 through 547  
13 admitted.)

14 BY MR. CASTELLANO:

15 Q. Now, referring to other charges with these  
16 defendants, we continue to say "the Molina murder,"  
17 but is there more than one charge to include a  
18 conspiracy to murder?

19 A. Yes.

20 Q. So looking at Exhibit 539, who is this  
21 person?

22 A. Rudy Perez.

23 Q. Is this one of the defendants on trial?

24 A. Yes, sir.

25 Q. I notice the date there is also April 28

1 of 2016.

2 A. Phase 2.

3 Q. So without getting into the details, how  
4 is it that Mr. Perez was not charged initially but  
5 was charged in the later indictment?

6 A. We developed additional information that  
7 supported probable cause to charge him.

8 Q. And who was the person who was involved  
9 with that part of the investigation? Which  
10 cooperator?

11 A. Billy Cordova, Little Shadow.

12 Q. And how did you come to know Billy  
13 Cordova?

14 A. Depends how long of a story you want. But  
15 the short version is: He was in custody up at MDC,  
16 which is the Metropolitan Detention Center in  
17 Bernalillo County. I was at the detention center  
18 visiting another SNM member who was cooperating.  
19 The manner in which the correctional officers  
20 brought the cooperator into the office to talk to me  
21 compromised the cooperator. It basically --  
22 because --

23 Q. Here's the question. MDC is where and  
24 what is it called?

25 A. It's the Metropolitan Detention Center.

1 It's Bernalillo County's jail. It's west of  
2 Albuquerque.

3 Q. And did you say that you were intending to  
4 meet with a cooperator there?

5 A. Yes.

6 Q. And what's the issue in meeting with  
7 somebody who is cooperating with you in a jail or  
8 prison facility? What concerns do you have?

9 A. Well, it's kind of a delicate matter,  
10 because when I arrive at a jail, because I don't  
11 work there, I have to identify myself. And jails  
12 and prisons have ears and news travels quickly. And  
13 what the concern was, being able to visit a  
14 cooperator without compromising the fact that the  
15 cooperator is meeting with the FBI.

16 Q. And in order to kind of gloss over that  
17 situation at the jail, what procedure or tactic did  
18 you use?

19 A. The cooperator was living in an SNM pod.  
20 So we asked the jail to pull everybody from the pod  
21 one at a time, to make it look like we were there to  
22 interview all the SNM members. That way, I could  
23 relay the information to the informant, and make it  
24 look like he's just another guy getting questioned  
25 by the FBI that day. Phase 1 of the investigation

1 happened. The SNM is well aware that the FBI is  
2 pursuing them, investigating them. So for the FBI  
3 to show up and interview everybody in the jail  
4 that's SNM is a good cover story at that point.

5 Q. Okay. So this would be then after  
6 December, which is phase 1, leading up to April; is  
7 that the correct timeframe? Is this before the  
8 indictment adding Defendants Herrera and Perez?

9 A. Yes.

10 Q. So what happens -- what do you expect when  
11 Billy Cordova walks in the room?

12 A. I thought we were going to have problems  
13 with him. According to the guards, they actually  
14 brought extra correctional officers in because they  
15 thought he would attack us.

16 Q. And at that point was he cooperating at  
17 all?

18 A. No.

19 Q. Did you expect him to cooperate at all?

20 A. I did not.

21 Q. And what happened once you met him?

22 A. He came in with a big smile, he sat down,  
23 and he talked to -- at the time, I sat off to the  
24 side and I had two other agents talking to him. And  
25 I was just sort of evaluating him without talking to

1 him. After some time, I entered the conversation  
2 and he agreed to cooperate with us.

3 Q. Did that surprise you?

4 A. Very much so. In fact, I didn't even have  
5 a pen and a piece of paper out. I didn't expect him  
6 to talk to me.

7 Q. And when he agreed to cooperate with you,  
8 was he charged with any crimes?

9 A. I didn't charge him with any crimes. He  
10 was at jail because he'd been charged with a crime.

11 Q. What was he in jail for at the time?

12 A. He'd been charged with a homicide, and he  
13 pled guilty to something less than homicide. I  
14 think it might have been manslaughter.

15 Q. Do you remember if he pled guilty or went  
16 to trial on that matter?

17 A. Thank you. I think he actually -- I'm not  
18 sure.

19 Q. If you don't remember, that's okay.

20 A. I don't recall.

21 Q. Did you discuss with him the idea that you  
22 might be looking at him to charge him because other  
23 people had already been charged?

24 A. Yes.

25 Q. And once he decided to cooperate, what

1 decision did you make about any charge decisions  
2 regarding Billy Cordova?

3 A. I don't make charging decisions. I make  
4 recommendations to the U.S. Attorney's office. When  
5 Billy Cordova told me that he would cooperate, at  
6 that point I was no longer looking to charge him. I  
7 was looking to utilize him as a tool to continue to  
8 collect the information on the SNM.

9 Q. And based on what you knew of his status  
10 in the gang, did you think that you could utilize  
11 him successfully?

12 A. Absolutely.

13 Q. And did you utilize him?

14 A. I did.

15 Q. For what purpose?

16 A. To simply go back into the prison as a  
17 good-standing member of the S, a popular well-known  
18 one, wearing an FBI wire.

19 Q. Can you tell the members of the jury if he  
20 wore a wire when he was housed next to Rudy Perez?

21 A. He did.

22 Q. And Carlos Herrera?

23 A. He did.

24 Q. And as a result of recordings and what the  
25 investigation revealed, were these two gentlemen

1 then added to the Molina murder?

2 A. Yes.

3 MR. VILLA: Objection, Your Honor.

4 THE COURT: What's the objection?

5 MR. VILLA: I mean, I think this is based  
6 on hearsay information. He's essentially asking the  
7 results of information that transpired between Mr.  
8 Cordova and Mr. Perez.

9 THE COURT: Overruled.

10 BY MR. CASTELLANO:

11 Q. Then turning to Exhibit 539, who are we  
12 looking at?

13 A. Rudy Perez.

14 Q. And let's turn then to Exhibit 540. What,  
15 if anything, do you notice about his tattoos in  
16 Exhibit 540?

17 A. Nothing of significance. He has his name  
18 on his lower stomach, but nothing of significance.

19 Q. Turning to 541.

20 A. There is a tattoo there on his neck that  
21 says "Mi Vida Loca," "my crazy life." We in law  
22 enforcement used to attribute that to gangs. But a  
23 lot of people get them who aren't gang members.

24 Q. So in your opinion, that tattoo by itself  
25 may not necessarily have any significance?

1 A. Today, as I sit here, that tattoo doesn't  
2 mean anything.

3 Q. Let's look at Exhibit 542. Look at the  
4 bottom of his arms.

5 A. Yes. It says "New" on the back side of  
6 his wrist.

7 Q. Let's go to Exhibit 543.

8 A. On the opposite wrist it says "Mexico."

9 Q. Turning to Exhibit 544, anything that you  
10 notice from that particular exhibit?

11 A. No.

12 Q. Exhibit 545.

13 A. On the upper portion of Mr. Perez' back,  
14 it says "Brown Pride."

15 Q. Exhibit 546.

16 A. On the back of Mr. Perez' left shoulder,  
17 there is a tattoo of a peacock.

18 Q. You talked a little bit about that  
19 earlier. Have you noticed peacock tattoos on other  
20 people who were arrested as part of the overall  
21 investigation?

22 A. Yes.

23 Q. Exhibit 547. Anything stand out in that  
24 one?

25 A. No, sir.



1 Q. Turning to the exhibits beginning with  
2 number 528 to 530.

3 MS. JACKS: We have no objection.

4 MR. VILLA: No objection.

5 MR. LOWRY: No objection, Your Honor.

6 MR. MAYNARD: No objection.

7 THE COURT: All right. Government's  
8 Exhibits 528, 529, and 530 will be admitted into  
9 evidence.

10 (Government Exhibits 528 through 530  
11 admitted.)

12 BY MR. CASTELLANO:

13 Q. Beginning with Exhibit 528. Who is this?

14 A. Carlos Herrera.

15 Q. And judging by the date of April 28, does  
16 this mean this was part of phase 2 of the  
17 investigation?

18 A. Yes.

19 Q. Looking at 529.

20 A. This is a photo of Mr. Herrera with his  
21 shirt off. You see just above his belly button he  
22 has a Zia with an S in it.

23 Q. Exhibit 530?

24 A. That's a close-up photo of the same.

25 Q. Also looking at Exhibit 531?

1 A. The same.

2 Q. And 532, anything of significance in 532?

3 A. No, sir.

4 Q. Or 533?

5 THE COURT: All right. You haven't moved  
6 these admissions. Do you want to pull those down  
7 for a second? What numbers are these?

8 MR. CASTELLANO: Your Honor, these are --  
9 and I apologize. These are Exhibits 528 through  
10 538. I thought I had. But I may have missed that.

11 THE COURT: What you said a minute ago was  
12 528 to 530. Did you mean 538?

13 MR. CASTELLANO: Yes, Your Honor, 538.

14 THE COURT: Any objection to those?

15 MS. JACKS: No.

16 MR. VILLA: No, Your Honor.

17 MR. LOWRY: No, objection.

18 MR. MAYNARD: No, Your Honor.

19 THE COURT: So 528 through 538 will be  
20 admitted into evidence.

21 (Government Exhibits 528 through 538  
22 admitted.)

23 MR. CASTELLANO: Thank you, Your Honor.

24 BY MR. CASTELLANO:

25 Q. So let's look at 534. Anything there that

1 stands out?

2 A. No.

3 Q. Turning to Exhibit 535?

4 A. This is a photo of Mr. Herrera's left  
5 hand. He has an 18 on his middle fingers.

6 Q. Have you seen the number 18 on other  
7 people?

8 A. Yes.

9 Q. And what has it meant for the other  
10 people?

11 A. 18th Street Gang in Albuquerque.

12 Q. Looking at Exhibit 536?

13 A. This is the back of Mr. Herrera's head and  
14 neck, and you see it's spelled out 18 again in  
15 reference to the street gang.

16 Q. Exhibit 537?

17 A. I don't see anything of significance.

18 Q. And that Exhibit 538.

19 A. This is Mr. Herrera's left hand and you  
20 see his moniker there, "Lazy." Earlier I talked  
21 about that tattoo that said "Mi Vida Loca." It can  
22 also signify those three dots. But again, kids in  
23 high school get these now sometimes.

24 Q. So from this investigation, have you come  
25 to know Mr. Herrera as Lazy?

1 A. Yes. That's his moniker.

2 Q. I mentioned another indictment earlier.  
3 Is it fair to say that in the first indictment, Mr.  
4 Sanchez and Mr. Baca were named when this was first  
5 charged?

6 A. Yes.

7 Q. And then when it was charged a second  
8 time, were they renamed in that indictment adding  
9 these two defendants?

10 A. Yes.

11 Q. I'm going to go back to something I missed  
12 with Mr. Armijo, Manuel Jacob Armijo.

13 A. Yes.

14 Q. I was asking you about his indictment. In  
15 his case, do you recall conduct in his first  
16 indictment that was removed from a second  
17 indictment?

18 A. Yes.

19 Q. What did that relate to?

20 A. It related to the murder of SNM member  
21 Michael Giron, alias "Choo Choo," in Albuquerque.

22 Q. And when you looked closer into those  
23 allegations, did you, in conjunction with the U.S.  
24 Attorney's Office, decide to remove that conduct  
25 from the second indictment?

1 A. Yes. Evidence works both ways. If we  
2 find something that shows they didn't do it, then  
3 that was the case there, they took it out.

4 Q. And to clarify this, is Mr. Armijo  
5 cooperating with the Government?

6 A. Yes.

7 Q. And was that -- can you tell the members  
8 of the jury whether that conduct was removed from a  
9 second indictment because he was cooperating or  
10 because the investigation showed something  
11 otherwise?

12 A. To be clear, it was removed because the  
13 investigation showed otherwise.

14 Q. Okay. Now, moving to cooperators in this  
15 case, obviously the jury heard about benefits and  
16 things of that nature in opening statements. Can  
17 you tell the members of the jury whether some of the  
18 cooperators in this case received benefits?

19 A. Yes.

20 Q. So turning to people like, let's say,  
21 Jerry Armenta or Jerry Montoya, people like them,  
22 can you tell the members of the jury whether or not  
23 they were incarcerated pending their charges?

24 A. They were in custody. They were  
25 incarcerated.

1 Q. And while they were incarcerated, did the  
2 FBI put any money on their books? And I'll have you  
3 explain that in a second.

4 A. Yes.

5 Q. What does it mean to put money on  
6 someone's books?

7 A. If you had a family member that was in  
8 prison and you wanted to send money for them to  
9 utilize to make phone calls or buy stamps or letters  
10 or drawing pencils or extra food, you put money on  
11 their books.

12 Q. And is that like a prison or jail account?

13 A. Yes. You give the money to the Department  
14 of Corrections, you let them know which inmate it's  
15 for, and it goes on their account.

16 Q. And for people like that -- the jury will  
17 hear about each of them individually later on. But  
18 for people who you put money on their books,  
19 oftentimes what was the amount that was placed on  
20 their jail or prison books?

21 A. It averaged out to about \$50 a month, or a  
22 little less than \$2 a day.

23 Q. What was the purpose of doing that?

24 A. So they could buy extra stamps, envelopes,  
25 drawing pencils, chips, snacks. They could make

1 extra phone calls, because those cost money in some  
2 of the levels -- well, some of the areas of the  
3 prison. And some of the guys asked that the money  
4 be sent to their wives instead, because they had to  
5 buy shoes because school was starting. So they were  
6 free to use it within the prison. However, the  
7 prison allowed them to use that dollar-something a  
8 day. On the outside, if they asked us to give the  
9 \$50 to their wife or girlfriend, we'd try to  
10 accommodate that.

11 Q. So was this after each of these  
12 individuals turned their backs on the prison gang?

13 A. Yes. This is once they were cooperating  
14 and were relocated to a different facility for  
15 safety.

16 Q. And what happened to any of these  
17 individuals if they broke the rules?

18 A. Our rules?

19 Q. Yes.

20 A. I talked to them.

21 MS. JACKS: Objection, compound.

22 THE COURT: Overruled.

23 A. I'd talk to them, confront them about it.  
24 The Corrections Department would be involved in it,  
25 because they're inmates. And from the FBI

1 perspective, I closed them. I closed them as an  
2 informant. It doesn't mean I didn't still talk to  
3 them, or talk to them through their attorney, visit  
4 them. It doesn't mean they didn't cooperate. But  
5 the FBI stopped paying them and officially closed  
6 them as an FBI informant.

7 Q. What was the purpose of opening them as  
8 FBI informants?

9 A. Simply stated -- well, a few things.  
10 Because some of them were actually operational,  
11 where they wore wires and did things like that. In  
12 order for an informant to be operational for us,  
13 there are certain rules and protocols that have to  
14 be followed, the first of which is: I actually have  
15 to open them as an informant. That starts that  
16 documentation process, that official recognition  
17 that they're working with us.

18 In terms of, you know, just being a case  
19 agent and trying to manage a lot of aspects of the  
20 case, I like them being open as an informant because  
21 it helped me manage -- use the FBI's resources to  
22 manage that person. So for example, if an informant  
23 got commissary money or the \$50 a month, a different  
24 entity within the FBI kept that accounting for me so  
25 that I didn't have to. And so it was a good way to



1 manage them.

2 Q. Why did you feel it necessary to account  
3 for the benefits that you were giving them?

4 A. That is all important information when we  
5 go to court and I'm asked by both the prosecution  
6 and the defense to provide that information. I'm  
7 then able to, down to the penny, with dates, because  
8 anytime we provide money to an informant, they have  
9 to sign our receipt. It's not always in their real  
10 name, but it's in an FBI-created name with an FBI  
11 informant number so we can keep track of that.

12 Q. And then, as you stated, once you have  
13 benefits, you also not only turn over that  
14 information to the Government, but it goes to the  
15 defense attorneys?

16 A. It does. I don't typically provide stuff  
17 directly to the defense, but I do it through your  
18 office.

19 Q. Now, you mentioned earlier you had moved a  
20 couple of people.

21 A. Yes.

22 Q. Tell us who you moved in relation to this  
23 case.

24 A. Do you want to start in prison or on the  
25 street?

1 Q. Let's start on the street.

2 A. Okay. After -- actually, just before the  
3 phase 1 takedown, we moved Mario Montoya. That was  
4 the informant I had on the street that was acting as  
5 the hit man in the Marcantel-Santistevan conspiracy.  
6 I moved him out of state.

7 I also moved -- subsequently moved Eric  
8 Duran when he got out of prison. The Department of  
9 Corrections allowed him to start his parole term  
10 early. And so we moved him out of state for safety  
11 as well.

12 Other cooperators, I offered to move them  
13 out of state. In one instance we helped move a  
14 cooperator's wife out of state who felt threatened.  
15 In other instances I've offered, but I can't  
16 think -- not everybody wants to leave New Mexico.

17 Q. So for people like Eric Duran and Mario  
18 Montoya, what was your concern about getting them  
19 out of the state?

20 A. They were walking dead men.

21 Q. And can you tell the members of the jury  
22 whether their voices showed up on recordings that  
23 were turned over?

24 MR. LOWRY: Objection, Your Honor,  
25 hearsay.

1 THE COURT: It's just a yes/no question.

2 Overruled.

3 Don't tell us the contents. Just tell us  
4 yes or no.

5 MR. CASTELLANO: Can I have the question  
6 again? I forgot, Your Honor.

7 THE COURT: The question was: "Can you  
8 tell the members of the jury whether their voices  
9 showed up on the recordings that were turned over?"

10 A. Yes.

11 BY MR. CASTELLANO:

12 Q. Correct. I'm not worried about the  
13 content. What I want to know is whether their  
14 voices were captured on recordings when they were  
15 talking to other people charged in this case.

16 A. Yes.

17 Q. And did that give you concern?

18 A. Yes.

19 Q. Did that give them concern?

20 A. Yes.

21 MS. JACKS: Objection. Move to strike;  
22 testimonial and hearsay.

23 THE COURT: Overruled.

24 BY MR. CASTELLANO

25 Q. Regarding Mr. Duran, there has been --

1 well, it's not in evidence, but it was talked about  
2 in opening statements by the attorneys. Are you  
3 aware of whether or not his sentence in the  
4 Corrections Department was reduced?

5 A. Yes.

6 Q. And are you aware of why his sentence in  
7 the Corrections Department was reduced?

8 A. Yes.

9 Q. What was the basis?

10 A. The Department of Corrections awarded him  
11 with, I believe, two lifesaving awards. It's  
12 something I wasn't familiar with before this case.  
13 But he was credited with saving two lives, and so  
14 there is -- their policies allow them to award time  
15 off their sentence for that.

16 Q. Did you ask for that?

17 A. I did not. I wasn't aware of it when it  
18 was brought up. I know about it after the fact.

19 Q. In terms of benefits to Eric Duran, what  
20 type of monetary benefits did he receive?

21 A. He received money from the FBI. I don't  
22 have the exact amount. I know that I put -- in late  
23 2016 I put \$25,000 on his prison account, which is  
24 not an ideal way to pay an informant, but  
25 circumstances in the Government were that I had to

1 spend the money due to fiscal end-of-year kind of  
2 silly stuff. So I paid him \$25,000.

3 Q. Did any of the other people cooperating  
4 with the Government receive that much money?

5 A. No, not anywhere near that.

6 Q. What was different about Eric Duran?

7 A. Duran made his way to the top of the SNM's  
8 hit list. He recorded --

9 MR. LOWRY: Objection, Your Honor, that  
10 calls for --

11 THE COURT: Sustained. Let's try not to  
12 ask open-ended questions like that.

13 MR. CASTELLANO: Understood, Your Honor.

14 MS. JACKS: Can the answer be stricken and  
15 the jury be instructed?

16 MR. LOWRY: Can we approach the bench?

17 THE COURT: No, you can't. The jury will  
18 disregard that statement, and it will stricken from  
19 the record.

20 Mr. Castellano.

21 BY MR. CASTELLANO:

22 Q. Agent Acee, I may lead you through part of  
23 the testimony here. So you mentioned that you  
24 wanted to move him out of state?

25 A. Yes.

1 Q. Did the money help cover the moving  
2 expenses?

3 A. Yes.

4 Q. And what else did the money cover in terms  
5 of benefits to Eric Duran and moving him out of  
6 state?

7 A. I calculated the amount, I factored in  
8 moving Mr. Duran and his family and children, the  
9 expenses related to moving a significant distance  
10 from New Mexico. It wasn't just a neighboring  
11 state. I factored in six months of rent at the new  
12 location, which has a much higher rent than New  
13 Mexico. And then just some of the basic living  
14 expenses associated with that move.

15 Q. And with Eric Duran, once he moved, did he  
16 continue working for the FBI?

17 A. Yes.

18 Q. Did he continue working for you or for  
19 another office of the FBI?

20 A. He -- when he moved, he was transferred to  
21 another agent in another office of the FBI.

22 Q. And was he involved in other operations?

23 A. Not for New Mexico, but for the new  
24 office, yes.

25 Q. And if any of those investigations are

1 pending, I won't ask you about those. I'll stay  
2 away from those.

3 But as a result of him moving out of  
4 state, what, if any, other benefits did you provide  
5 to him once you moved him?

6 A. I want to be clear. He received more than  
7 the \$25,000 from New Mexico agents. There were some  
8 other costs that came up. I know at one time we  
9 gave his wife \$6,000 to help move, move some  
10 vehicles. When he got to the new FBI office, I am  
11 aware that he received some money there, as well;  
12 not to the tune of \$25,000. I think, all told, Eric  
13 Duran received about \$45,000 or so from the FBI  
14 between the two offices. As far as other benefits,  
15 we mentioned what the Department of Corrections gave  
16 him. I can't think of any more benefits, at least  
17 from my handling of him.

18 Q. It was suggested from the opening  
19 statements that the Government was responsible for  
20 charges getting dropped against Mr. Duran. I want  
21 to talk to you about charges in El Paso, for  
22 starters.

23 A. Okay.

24 Q. Were you aware of charges pending against  
25 Mr. Duran coming out of El Paso?

1           A.    I became aware of it after he left New  
2 Mexico, yes.

3           Q.    How did it come up?

4           A.    I'm not sure how much detail you want. I  
5 can give you a pretty long story, but --

6           Q.    Let me ask you this, to avoid --

7                   THE COURT: Why don't you lead him through  
8 this?

9                   MR. CASTELLANO: Yes, sir.

10 BY MR. CASTELLANO:

11           Q.    Is it fair to say he was working for the  
12 FBI unrelated to this case in another part of the  
13 country?

14           A.    Yes.

15           Q.    And related to that, was it important that  
16 he not have any outstanding charges or warrants?

17           A.    Yes.

18           Q.    And when he was working for them, did the  
19 issue of a warrant in El Paso surface?

20           A.    Yes.

21           Q.    And what happened to those charges?

22           A.    Ultimately the district attorney's office  
23 in El Paso dismissed that arrest warrant.

24           Q.    And what efforts were you doing to clear  
25 up those charges for Mr. Duran?



1           A.    I don't clear up charges. I didn't clear  
2 up his charges.

3           Q.    And -- well, what steps were you going to  
4 take to present him to El Paso authorities to hold  
5 him responsible or let them figure out what they  
6 were going to do with those charges?

7           A.    I offered to pick him up on his warrant,  
8 fly him to El Paso, and deliver him to the DA's  
9 office.

10          Q.    If you recall, approximately how old were  
11 those charges?

12          A.    Close to 20 years.

13          Q.    So after the DA's office looked at the  
14 case, was the case dismissed?

15          A.    Yes.

16          Q.    Did you ask their office to dismiss those  
17 charges?

18          A.    I didn't. And I don't think I ever had a  
19 single conversation with anyone in their office.

20          Q.    Now, when it comes to any conduct out of  
21 the state, did you have a say in dismissal of any  
22 charges if he got into trouble up there?

23          A.    No.

24          Q.    Now, are you aware of a situation where he  
25 was found in a vehicle with a firearm?

1 A. Yes.

2 Q. What did you do in response to learning  
3 that information?

4 A. I asked the New Mexico Department of  
5 Corrections to issue a warrant for him for parole  
6 violation, to bring him back to New Mexico. I also  
7 reached out to an FBI agent in the city he was in  
8 and asked them to open a case on him and charge him  
9 with a federal violation of being a felon in  
10 possession of a firearm.

11 Q. What steps did you take to further that  
12 investigation against Eric Duran?

13 A. As soon as Duran got back here to New  
14 Mexico, I had obtained a search warrant to swab the  
15 inside of his mouth for DNA. I executed it on him  
16 as soon as he arrived. And I sent that swab to the  
17 FBI in -- are we not saying locations?

18 Q. Well, in other words, did you send the  
19 swab for DNA testing?

20 A. I did not. I sent it to the case agent,  
21 the new FBI case agent that I contacted, so that  
22 they could submit it with their case.

23 Q. As far as you know, are you pending  
24 results to see if the firearm in that case has Eric  
25 Duran's DNA on it?

1 A. Yes, we're waiting for DNA and the  
2 fingerprints.

3 Q. Let me ask you about some of the other  
4 cooperators in the case. At some point in time were  
5 some of the cooperators housed in the same facility?

6 A. Yes.

7 Q. For their safety, were you trying to house  
8 them away from other inmates?

9 A. Yes.

10 Q. At that point in time, was it known that  
11 they were cooperating with the Government?

12 A. Yes.

13 Q. So under those circumstances, were some of  
14 those inmates allowed additional privileges?

15 A. Yes.

16 Q. What were some of those privileges?

17 A. They got extra tier time, or time to be  
18 outside their cells and be in the bigger area. I  
19 think we saw some photos earlier where it shows some  
20 tables, and there are board games and stuff out  
21 there. So they had extra tier time. They were  
22 afforded extra phone calls so they could call family  
23 and friends. I don't know how that translates to  
24 calling attorneys. And they got more family visits.

25 Q. Do you know what a contact visit is?

1 A. I believe so.

2 Q. Or at least, do you know, if an inmate has  
3 a contact visit with family, are you aware of  
4 whether or not there are rules on how much contact  
5 is allowed?

6 A. Yes.

7 Q. At some point did you become aware that  
8 some of those cooperators broke those rules?

9 A. Yes.

10 Q. And in what context did they break those  
11 rules?

12 A. They had more contact than they were  
13 allowed.

14 Q. And does that include sexual contact in  
15 some cases?

16 A. Yes.

17 Q. At that point in time, until that  
18 happened, were those some of the inmates you were  
19 putting money on their books?

20 A. Yes.

21 Q. Did they get in trouble for that contact  
22 with, I'll say, females?

23 A. Yes.

24 Q. What happened -- what were the  
25 consequences, once they broke those rules, with the

1 contact visits?

2 A. I closed them as informants. I advised  
3 them of that.

4 Q. Did that mean you quit paying them any  
5 money, even that \$50 a month?

6 A. Yes. I -- for many months, in some cases  
7 almost a year, I had no contact with them and would  
8 only interact with the attorneys. I know that two  
9 of the men were not housed there on federal charges.  
10 They were there on state charges, and the State  
11 locked them down in isolation for, like, nine  
12 months.

13 MR. VILLA: Objection, hearsay.

14 THE COURT: Lay a foundation if he's going  
15 to testify to that. Are you wanting to elicit this?

16 MR. CASTELLANO: Yes, Your Honor. I'm  
17 intending to elicit consequences to these  
18 cooperators.

19 THE COURT: Lay a foundation as to how he  
20 knows about the consequences.

21 BY MR. CASTELLANO:

22 Q. In terms of the consequences, you said in  
23 some cases you didn't have contact with them for  
24 some time?

25 A. Yes, I limited it to only having contact

1 with them through their attorneys.

2 Q. Then were you made aware whether they were  
3 moved to other facilities?

4 MR. VILLA: Objection. Calls for hearsay.

5 THE COURT: Well, you're going to have to  
6 lay some foundation before I allow him to answer  
7 these questions as to how he knows this. If he just  
8 got it from the Corrections Department, I'll have to  
9 exclude it.

10 BY MR. CASTELLANO:

11 Q. Where were they housed at the point that  
12 they were getting contact visits?

13 A. The North facility, L pod, in Santa Fe.

14 Q. And so were there times when you would go  
15 up there to check on them and you would see them  
16 there?

17 A. Yes. I was there a couple times a month.

18 Q. And after they got in trouble, did you see  
19 them there anymore?

20 A. No. They were transferred.

21 Q. Now, in terms of the phase 1 and phase 2,  
22 let me return to that part of the investigation for  
23 a bit. Did you eventually have a phase 3?

24 A. Yes.

25 Q. What was the purpose of phase 3?

1           A.     It was to address several threats to  
2 cooperators, witnesses.

3           Q.     And in relation to that, did you then once  
4 again begin investigating and executing warrants at  
5 people's homes?

6           A.     Yes.   I wrote 12 federal search warrants  
7 and then four probation parole searches were also  
8 conducted.

9           Q.     What did you recover as a result of the  
10 warrants in phase 3?

11           MR. LOWRY:   Objection, Your Honor.   How is  
12 this relevant?

13           THE COURT:   Overruled.   I think it's  
14 relevant.

15           A.     We collected a lot of the usual stuff we  
16 do during search warrants:   Drugs, currency -- I  
17 think we seized 11 firearms during the searches, and  
18 additional information related to the SNM.

19 BY MR. CASTELLANO:

20           Q.     In addition to any state inmates, did you  
21 then conduct any searches of any federal inmates'  
22 cells?   You, or have other people do it?

23           A.     Yes.

24           Q.     Who was that?

25           A.     A federal inmate by the name of Frankie

1 Gallegos, or Frankie G, who was housed at the United  
2 States Bureau of Prisons facility in Beaumont,  
3 Texas.

4 Q. And what relation does he have to any SNM  
5 Gang members in New Mexico?

6 A. He has two brothers who are also SNM  
7 members that we've arrested.

8 Q. Can you tell the members of the jury  
9 whether those brothers are charged in another part  
10 of this case?

11 A. They are.

12 Q. With what type of conduct?

13 A. One brother is charged with two  
14 violent-crime-in-aid-of-racketeering murders. And  
15 the second brother -- excuse me. He has more  
16 charges. He also has been charged with  
17 violent-crime-in-aid-of-racketeering attempted  
18 murder, assault causing bodily injury, and  
19 intimidation of a victim or witness.

20 The second brother has been charged in one  
21 violent-crime-in-aid-of-racketeering murder.

22 Q. In terms of the law enforcement techniques  
23 employed in this case, can you tell us what a  
24 reversal operation is?

25 A. Yes. That's when we, the law enforcement,



1 pose as bad guys and we sell the gun or the drugs or  
2 something illegal to someone.

3 Q. Did you conduct those type of operations  
4 in relation to this overall investigation?

5 A. Yes, on three occasions.

6 Q. And on that occasion, was the target of  
7 that investigation seeking anything?

8 A. Yes.

9 Q. What was that person or those persons  
10 seeking?

11 A. Guns.

12 Q. Did the FBI provide -- in each of those  
13 three instances, did the FBI, through an undercover  
14 person, provide firearms to those people?

15 A. Yes.

16 Q. And what happened once the firearm was  
17 delivered?

18 A. An FBI SWAT team hit their house and  
19 arrested them and recovered a gun.

20 Q. How quickly after the gun was delivered?

21 A. We did it three times. The longest period  
22 of time that went by was probably two minutes. The  
23 shortest was 30 seconds. The FBI SWAT teams were in  
24 vans parked down the road, around the corner.

25 Q. And before the FBI delivered those

1 firearms to those people, can you say whether or not  
2 they were operational, whether they could fire  
3 bullets?

4 A. They could function, but they could not  
5 fire bullets.

6 Q. Why not?

7 A. The FBI shortened the firing pin just a  
8 couple of millimeters so it appeared to work but it  
9 wouldn't strike the primer of the bullet.

10 Q. So overall, if you recall, approximately  
11 how many murders have been charged in the overall  
12 investigation?

13 A. Nine.

14 Q. In addition to any proactive approaches  
15 for safety purposes, what have you and the other  
16 agents been doing in terms of approaching people  
17 coming out of the jail or prison?

18 A. Every SNM member that comes out of a  
19 federal prison or a state prison, myself -- usually  
20 myself or another FBI agent is at their parole  
21 office to meet them when they check in with their  
22 initial check-in with their parole officer.

23 Q. And what is the purpose of doing that?

24 A. Twofold. Every one of them has been aware  
25 of the fact that the FBI has been picking up the SNM

1 members. It's to introduce myself to them, ask them  
2 to gauge where they're at; are they going to stay  
3 active, or are they done. And quite frankly, it's  
4 to let them know that not only do they have the  
5 conditions of their parole, but if they're going to  
6 continue to be gang members in New Mexico, we're  
7 going to keep an eye on them and we're going to be  
8 after them.

9 Q. Now, we talked about the use of informants  
10 and -- including the prison facilities. What were  
11 your options in terms of investigating inside the  
12 prison? In other words, what were your options in  
13 terms of putting an undercover agent into the prison  
14 to record the defendants in this case?

15 A. Putting an undercover police officer, FBI  
16 agent in a prison setting like that is actually not  
17 an option.

18 Q. Why not?

19 A. For a number of reasons. Specific to this  
20 case, I mean, the SNM members' resumes were decades  
21 in the making. To have an undercover agent to just  
22 come in, ask to be housed in their pod, to live with  
23 them and try to befriend them, there were -- it was  
24 not only unlikely to succeed, but there were just  
25 way too many risks with that, not only in failing

1 the case; I think they'd smell that out a mile away.  
2 But it would be too dangerous for an agent to have  
3 to live in there without -- it's against all of our  
4 protocols for undercover operations. We have no  
5 ability to rescue them. We have no ability to  
6 really monitor it. And let alone, what we're  
7 exposing the agent to, to lock him up in a prison  
8 for a long period of time to try to infiltrate a  
9 gang -- it just wouldn't work.

10 Q. In other words, for example, if you were  
11 trying to get an undercover officer into prison to  
12 infiltrate a gang, without any specifics, would you  
13 be concerned about anything the gang might ask him  
14 to do to become a member?

15 A. Absolutely.

16 Q. Or anything to do on behalf of the gang to  
17 further their purposes?

18 A. Absolutely.

19 Q. Could you allow an undercover agent to do  
20 anything like that if it involves something illegal?

21 A. No.

22 Q. So in these circumstances, even though we  
23 had problems with some of these informants, did you  
24 feel it was necessary to use them because of their  
25 relationships to the defendants in this case for the

1 purpose of capturing other evidence?

2 A. Yes.

3 MR. CASTELLANO: May I have a moment, Your  
4 Honor?

5 THE COURT: You may.

6 MR. CASTELLANO: Thank you, Your Honor.

7 THE COURT: Mr. Castellano.

8 BY MR. CASTELLANO:

9 Q. Turning back to the topic of informants  
10 and cooperators, are you aware that in this case  
11 many of the defendants receive their discovery, all  
12 the information in this case, on tablets?

13 A. Yes.

14 Q. And related to that topic, what, if any,  
15 concerns did you have about paperwork being given to  
16 any particular defendant in this case?

17 A. That it would enter the prison system or  
18 the jails.

19 Q. So for example, if there was a report of  
20 somebody who was cooperating, did you have concerns  
21 that that information might be distributed  
22 throughout a jail or prison facility?

23 A. Yes.

24 Q. At some point in time, were you made aware  
25 of some of the cooperators in this case misusing the

1 tablets?

2 A. Yes.

3 Q. And what was the misuse that you were made  
4 aware of?

5 A. I was told that they were able to access  
6 the internet. One of the cooperators -- actually, I  
7 was summoned to a meeting by the cooperators'  
8 attorneys. I attended the meeting. The cooperator  
9 told me that they could access the internet on the  
10 tablets, which I didn't think possible. So I gave  
11 them my email address and told them to email me.

12 Q. And was that done?

13 A. Yes. In fact, two of them emailed me  
14 overnight.

15 Q. And as best as you knew from the  
16 proceedings, was the internet function of the  
17 tablets supposed to be taken off or disabled on the  
18 tablets?

19 A. Yes.

20 Q. So then did you learn that somehow they  
21 learned how to disable the tablet and do other  
22 things with them?

23 A. Yes.

24 Q. And what were the types of things that  
25 were done with the tablets?

1           A.     They were able to send emails, access  
2     Facebook, make accounts, and surf the internet, and  
3     access pornography, and anything else that's on the  
4     internet.

5           Q.     And did they have authorization to do  
6     anything like that with the tablets?

7           A.     No.

8           Q.     In other words, did you allow them to look  
9     at pornography or access the internet with any of  
10    those devices?

11          A.     Absolutely not.

12          Q.     And as a result of a misuse of the  
13    tablets, were those tablets taken from them?

14          A.     They were.

15          Q.     And as far as you know, have those tablets  
16    been returned?

17          A.     The FBI has those tablets and is in the  
18    process of turning them over to some of the defense  
19    attorneys.

20          Q.     Now, we talked generally about putting  
21    money on cooperators' books. Were we talking in  
22    general terms?

23          A.     Yes.

24          Q.     As to -- in other words, do you have  
25    documentation which shows the exact amount of the

1 benefits provided to each of the cooperators?

2 A. Yes.

3 Q. I just want to correct something possibly.  
4 Do you recall if Gerald Archuleta was charged in  
5 phase 1 with the Julian Romero assault? He's got an  
6 arrest dated April, but do you recall if there was a  
7 warrant outstanding before he was arrested in  
8 Tennessee?

9 A. He was arrested right away. But no knock  
10 on the Marshal Service; it just takes a while for a  
11 defendant to get here. So --

12 THE COURT: Mr. Castellano, are you about  
13 done, or would this be a good time to take our  
14 afternoon break?

15 MR. CASTELLANO: Yes. It would be a good  
16 place for a break, Your Honor.

17 THE COURT: All right.

18 Since we're taking our first afternoon  
19 break during the evidentiary portion of the trial,  
20 I'm going to remind the jury of a few things that  
21 are especially important. Until the trial is  
22 completed, you're not to discuss the case, this  
23 case, with anyone, whether it's members of your  
24 family, people involved in the trial, or anyone  
25 else; and that includes your fellow jurors. If



1 anyone approaches you and tries to discuss the trial  
2 with you, please let me know immediately.

3 Also, don't listen to any news reports of  
4 the trial, and don't get on the internet and do  
5 research for the purposes of this case. And  
6 remember that you must not talk about anything with  
7 anybody that's involved in the trial, even if  
8 doesn't have anything to do with the trial.

9 If you need to speak with me, give a note  
10 to one of the court security officers or Ms.  
11 Standridge. Again, I'm going to keep repeating  
12 these today, but we'll start lightening them up  
13 tomorrow as we begin to get in a groove here.

14 I appreciate your hard work. We'll be  
15 back in about 15 minutes. All rise.

16 (The jury left the courtroom.)

17 THE COURT: All right. We'll be in recess  
18 for about 15 minutes.

19 (The Court was in recess.)

20 THE COURT: All right. While Ms.  
21 Standridge is lining up the jury, do you want to  
22 finish, Ms. Fox-Young?

23 MR. VILLA: Your Honor --

24 THE COURT: It's all right. If she's not  
25 here, we'll finish it another time, unless you want

1 to do it.

2 MR. VILLA: Well, I can add a couple of  
3 things.

4 THE COURT: Can you tell me what your end  
5 goal is? I'm not trying to cut off this, but what  
6 are you going to be requesting?

7 MR. VILLA: We ask for the remedy that the  
8 Court strike Billy Cordova from testifying as a  
9 witness, because this 302, which I alluded to on  
10 Friday -- so it's part of the record on Friday -- I  
11 gave the doc number that was attached to -- was from  
12 2016, has clearly exculpatory information about Mr.  
13 Cordova committing a murder, at least Giglio  
14 information, that wasn't produced until late  
15 January, mid-January, with the Jencks disclosure.  
16 It's not Jencks material. It's Giglio material.

17 And this is part of a pattern by the  
18 United States that we've been pointing out in which  
19 they have not produced Giglio material, and this  
20 Court ordered it to be produced back in the spring.

21 THE COURT: Do this for me: To my ears,  
22 it sounds kind of academic at this point. It may  
23 not be. Y'all may be having some prejudice or  
24 something like that. But it's sounding academic.  
25 Why don't you think about it. If you can point to

1 some prejudice in a more concrete way, I'm ears for  
2 it. But it sounds to me -- it's too academic for me  
3 to impose such a drastic remedy.

4 MR. VILLA: Well, your Honor, I don't  
5 think it's such a drastic remedy. We're talking  
6 about one witness. And when you have a pattern of  
7 conduct of violating the Court's rules and the  
8 Court's orders, it's not academic. It ensures that  
9 the Government complies with their constitutional  
10 duty.

11 THE COURT: Well, I certainly want them to  
12 do it. And I think I got a pattern of riding them  
13 pretty hard over the last year and a half. But if  
14 you can put some meat on these bones, then I can  
15 listen to it a little better. But it seems to me  
16 it's a pretty severe remedy being requested for  
17 something that I can't figure out how it's hurting  
18 you right at the moment.

19 MR. BECK: And Your Honor, I'll point out  
20 for the record --

21 THE COURT: Let me do this: Ms. Fox-Young  
22 is back.

23 Did you want to add anything? I know you  
24 were a little bit out of the room for Mr. Villa, but  
25 I cut you off a little bit earlier, so I wanted to

1 let you finish up.

2 MS. FOX-YOUNG: Thank you, Judge. I've  
3 looked back at the real-time. I think the best  
4 thing would be to submit a letter to the Court. I  
5 know you want to get the jury back in here, and I  
6 can fill in some of the blanks.

7 THE COURT: Okay. All rise.

8 (The jury entered the courtroom.)

9 THE COURT: All right. Everyone be  
10 seated.

11 All right. Mr. Acee, I'll remind you that  
12 you're still under oath.

13 Mr. Castellano --

14 Wait. We need somebody else? It's never  
15 good to lose a juror, is it? People are going to  
16 think I can't count that high.

17 All right. Mr. Acee, I'll remind you that  
18 you're still under oath.

19 Mr. Castellano, if you wish to continue  
20 your direct examination of Mr. Acee, you may do so  
21 at this time.

22 MR. CASTELLANO: Thank you, Your Honor.

23 THE COURT: Mr. Castellano.

24 BY MR. CASTELLANO:

25 Q. Agent Acee, I think we were just about

1 winding down our direct examination, but I want to  
2 make sure I have some of these players covered in  
3 the charge in the Molina murder, or implicated in  
4 the murder, or the conspiracy to murder. So far,  
5 you've talked about Defendant Baca, Defendant  
6 Sanchez, Defendant Perez, Defendant Herrera. You  
7 mentioned in passing David Calbert --

8 A. Yes.

9 Q. -- as well as Mr. Rodriguez. So when this  
10 case started with the State, is it your recollection  
11 it was three defendants charged when it was a state  
12 case?

13 A. Yes.

14 Q. And you also referenced Mr. Armenta and  
15 Mr. Montoya; is that correct?

16 A. Those are two of the other ones charged in  
17 the state case.

18 Q. I want to also ask you if there was  
19 another person implicated or somehow involved, and  
20 is that a person named Lupe Urquizo?

21 A. Yes.

22 Q. So is it fair to say the number went from  
23 nine -- well, three to approximately nine people  
24 now, somehow implicated or touching on the Molina  
25 murder?

1 A. Yes.

2 MR. CASTELLANO: I pass the witness, Your  
3 Honor.

4 THE COURT: Thank you, Mr. Castellano.

5 Ms. Jacks, are you going to examine first?

6 MS. JACKS: I think counsel for Mr. Baca  
7 is going first, and I'm last.

8 THE COURT: Okay. I'll get this order  
9 down here.

10 All right. Mr. Lowry, you have  
11 cross-examination of Mr. Acee?

12 MR. LOWRY: Thank you, Your Honor.

13 THE COURT: Mr. Lowry.

14 CROSS-EXAMINATION

15 BY MR. LOWRY:

16 Q. Good afternoon, Special Agent.

17 A. Good afternoon.

18 Q. Special Agent Acee, I'd like to take off  
19 where we sort of left off with benefits. Okay?

20 A. Okay.

21 Q. You had suggested that you thought  
22 Mr. Duran received about \$45,000 in benefits, if I  
23 understood you correctly.

24 A. Yes, sir.

25 MR. LOWRY: May I approach the witness,

1 Your Honor?

2 THE COURT: You may.

3 BY MR. LOWRY:

4 Q. I'm handing you an FBI document. Would  
5 you review that briefly?

6 A. Yes, sir.

7 Q. Does that refresh your recollection of how  
8 much Mr. Duran actually received?

9 A. I may have missed it. That looked like a  
10 \$1500 payment? Was there an aggregate total?

11 Q. There was an aggregate total.

12 A. I'm sorry, I missed that.

13 MR. LOWRY: May I approach again, Your  
14 Honor?

15 THE COURT: You may.

16 A. Yes, sir, on page 1 there. Thank you.

17 BY MR. LOWRY:

18 Q. What was the aggregate total?

19 A. It was \$46,200 -- was it 97, I think?

20 Q. 97 dollars.

21 A. Okay.

22 Q. That was as of November 1st, 2017?

23 A. Yes, sir.

24 Q. And this was --

25 THE COURT: Mr. Lowry, louder. Be louder.

1 You're not going to be too loud for us.

2 Q. And this would be the official  
3 record-keeping process you were talking about  
4 earlier --

5 A. Yes, sir.

6 Q. -- that helped you with that project?  
7 What about the other individuals involved with  
8 benefits? How did you make the decision who got how  
9 much?

10 A. There were some variables. Largely, the  
11 folks that were incarcerated got about -- what  
12 averages to about \$50 a month. The guys on the  
13 streets, the payments were a little bit different.

14 Q. Would there be any special occasions that  
15 caused you to give substantial sums of money to an  
16 individual?

17 A. Yes.

18 Q. And what would those occasions be?

19 A. Outside of, like, relocation-type things?

20 Q. Yes.

21 A. Well, if some of the informants would  
22 travel greater distances to meet with us, because it  
23 was a statewide case. So there were some  
24 circumstances where some informants had car issues.  
25 And we're not in the practice of buying people cars,



1 so we would help if they had a flat tire, buying  
2 them a tire, or things along those lines, putting  
3 gas in their car.

4 Q. Like Mario Montoya, for instance. You  
5 provided him with \$1,601.50 for vehicle repair?

6 A. Yes.

7 Q. Do you recall what that was, what type of  
8 repair that was?

9 A. Yes.

10 Q. What was it?

11 A. For an RV that he was leaving New Mexico  
12 in.

13 Q. Individuals like Javier Alonso would only  
14 get \$400. Why would he only get \$400 compared to  
15 others?

16 A. He started cooperating much later.

17 Q. Now, you were present in these debriefs  
18 with the U.S. Attorney's office when they came in to  
19 talk?

20 A. Yes.

21 Q. And another type of benefit might be the  
22 benefit of not getting prosecuted; correct?

23 A. I agree that's a benefit.

24 Q. And that kind of benefit is not going to  
25 show up on a financial report like that, is it?

1 A. No, sir.

2 Q. But that would be a fairly significant  
3 benefit?

4 A. Yes.

5 Q. You talked a little bit about Gerald  
6 Archuleta?

7 A. Yes.

8 Q. And you debriefed with Gerald Archuleta?

9 A. Yes.

10 Q. And Gerald Archuleta admitted to you that  
11 he wanted to kill Julian Romero?

12 A. Yes.

13 Q. But you didn't prosecute him for  
14 conspiracy to commit murder, did you?

15 A. I think I suggested that, but ultimately,  
16 of course, I defer to the U.S. Attorney's Office.  
17 And sometimes my reading of a statute isn't their  
18 reading of a statute.

19 Q. All right. But he did talk to other  
20 people about wanting Julian Romero killed, didn't  
21 he?

22 A. Absolutely, yeah.

23 Q. Because Julian Romero stole his wife away  
24 from him?

25 A. That's correct.

1 Q. And he had the motive?

2 A. Yes.

3 Q. He had the opportunity?

4 A. Yeah.

5 Q. I mean, he was the leader of SNM?

6 A. You and I probably disagree on who the  
7 leader is.

8 Q. Well, would you -- well, Mr. Baca was out  
9 of New Mexico for many years.

10 A. That is true.

11 Q. And Gerald Archuleta was the man in town,  
12 according to your investigation.

13 A. He was one of the leaders.

14 Q. So one of the leaders?

15 A. Yes.

16 Q. So let's talk about that for a second.  
17 What do you mean by "one of the leaders"?

18 A. In Mr. Baca's absence, that doesn't  
19 completely strip him of leadership; but because he's  
20 not on the scene, he's not in the state, other  
21 leaders have stepped up. And over time, leadership  
22 has changed. So in my mind, there has been  
23 certainly more than one leader in the gang.

24 Q. But let me get to the heart of this. When  
25 you go to interview people, you ask them point-blank

1 which faction you're in. "Are you in the Gerald  
2 Archuleta camp or are you in the Julian Romero  
3 camp?"

4 A. That is one of the questions I usually  
5 ask.

6 Q. That's because there are two different  
7 factions, in your mind?

8 A. Arguably three, and that doesn't count the  
9 feds.

10 Q. Right. And the federal SNM -- is that  
11 part of the SNM?

12 A. Yes, under a different organizational  
13 structure or leadership.

14 Q. We might not be seeing eye to eye. When I  
15 say "the federal SNM," I'm talking about the Mario  
16 Montoyas, the Eric Durans.

17 A. Oh. I'm referring to the guys that are in  
18 the Federal Bureau of Prisons. Sorry.

19 Q. But in your mind's eye, there are at least  
20 two factions?

21 A. Today, yes.

22 Q. And they would be characterized by the  
23 people that follow Julian Romero and the people that  
24 follow Gerald Archuleta?

25 A. No, sir. I think over history, that's

1 been -- there have been those issues. As we sit  
2 here today, if you're asking me factions, I think  
3 there is a state and I think there is a federal.

4 Q. Do you recall giving testimony -- well,  
5 let me put it this way. When you take an oath to  
6 testify in a courtroom like this, you're here to  
7 tell the truth?

8 A. Of course.

9 Q. And you're going to do the best of your  
10 ability to make sure you get it right?

11 A. Yes, sir.

12 Q. Every time you raise your hand and take  
13 that oath?

14 A. That's right.

15 Q. And you testified in front of the grand  
16 jury in this matter, didn't you?

17 A. Yes.

18 Q. And you say -- and in your grand jury  
19 testimony, you said that the SNM was divided. And  
20 you said to the grand jury, "I do say, when I  
21 interview these guys, 'Which side do you fall on?  
22 Gerald or Julian?' And the gang is still kind of  
23 divided, to this day."

24 A. Yes. There I'm referring to kind of  
25 opinions and what's happened within the gang. There

1 is definitely a split, and there are those that  
2 sided with Gerald and those that sided with Julian.

3 I agree.

4 Q. The leaders of the SNM.

5 A. They are both -- well, they both were  
6 leaders at one time, yes.

7 Q. You made this statement on April 21, 2016?

8 A. I believe you.

9 Q. Mr. Baca was incarcerated?

10 A. Yes.

11 Q. So on April 21, 2016, you told the grand  
12 jury that in your mind Gerald Archuleta or Julian  
13 Romero were the two leaders of the SNM?

14 A. That's what I --

15 Q. Pardon?

16 A. You're telling me that's what it says?

17 MR. LOWRY: May I approach, Your Honor?

18 THE COURT: You may.

19 MR. CASTELLANO: Your Honor, may we have a  
20 page reference, please, to the transcript?

21 MR. LOWRY: Sure.

22 A. On the top, it's page 108.

23 Sir, in this, I'm talking about the  
24 history of the SNM, and why there was a split over  
25 these two men, because they were battling over a

1 woman. I'm not talking about leadership.

2 BY MR. LOWRY:

3 Q. Well, you do say that the SNM is divided  
4 to this day?

5 A. I guess that's not in the highlighted  
6 part. Let me keep reading. Yes, I see that.

7 Q. And that day was April 21, 2016?

8 A. I believe it was, yes.

9 MR. LOWRY: May I approach?

10 THE COURT: You may.

11 BY MR. LOWRY:

12 Q. And according to your grand jury  
13 testimony, SNM is a blood in, blood out gang?

14 A. Yes.

15 Q. That means once you've signed up, there  
16 is -- only death gets you out?

17 A. It depends who in the gang you ask.

18 Q. And so if it depends on who you ask, what  
19 are the rules?

20 A. There's a lot of contradictions in the  
21 SNM, I've discovered.

22 Q. A lot of contradiction or a lot of  
23 confusion?

24 A. Contradictions.

25 MR. CASTELLANO: Your Honor, at this point

1 I'm going to object. I'm not sure if the attorney  
2 is trying to elicit expert testimony. If not, we're  
3 eliciting hearsay.

4 MR. LOWRY: No, I'm not, Your Honor.

5 MR. CASTELLANO: I would object to  
6 hearsay, Your Honor.

7 THE COURT: Well, don't elicit hearsay.

8 BY MR. LOWRY:

9 Q. So back to the benefits. We were talking  
10 about Eric Duran, and Mr. Castellano asked you about  
11 Eric Duran. Were you aware of any calls made on his  
12 behalf when he got in trouble with the law?

13 A. No. There were inquiries, but not what  
14 I'd characterize as calls on his behalf.

15 Q. When you realized he was in trouble, did  
16 you or anybody from the United States Attorney's  
17 Office for the District of New Mexico contact any of  
18 the prosecuting agencies?

19 A. Yes.

20 Q. In which cases did they contact the  
21 prosecuting agencies?

22 A. The first instance was when we learned  
23 there was an outstanding warrant in El Paso for  
24 Duran, but it was not in his name; it was in an  
25 alias name from 20 years earlier. The United States



1 Attorney's Office let the district attorney's office  
2 in El Paso know that we could deliver him, and we  
3 would; and I was told as soon as they want him, go  
4 pick him up and take him down there, and made plans  
5 to do that.

6 The second time -- well, I had interaction  
7 with the district attorney's office in Multnomah  
8 County, when I learned that Duran picked up some  
9 charges there.

10 And then the only other instance I can  
11 think of is -- well, related to that, I also had  
12 interaction with the United States Attorney's Office  
13 for the District of Oregon, again related to those  
14 charges.

15 Q. And those charges were never pursued?

16 A. I don't agree.

17 Q. Well, are you aware that if we're talking  
18 about the November 11 incident where Mr. Duran was  
19 caught in a vehicle with a pistol and with heroin,  
20 didn't the district attorney in Washington State  
21 dismiss -- or Portland dismiss those charges?

22 A. Well, they did once they learned we were  
23 going to pick them up. But my understanding, in  
24 talking with the deputy DA assigned to the case,  
25 they have similar rules to New Mexico where they

1 have to present to grand jury in a certain amount of  
2 time. They were intending to go to the grand jury.  
3 I don't know all the legal terms. I know there was  
4 some delay in collecting evidence before they were  
5 ready to present the case.

6 Q. Then why did the driver of that car  
7 already go to trial and was convicted?

8 MR. CASTELLANO: Objection, calls for  
9 hearsay.

10 THE COURT: Well, ask him if he knows.

11 BY MR. LOWRY:

12 Q. Do you know why?

13 A. No, sir --

14 THE COURT: Just answer yes or no.

15 A. No.

16 Q. You were talking about how swiftly the  
17 federal government could respond to situations  
18 regarding the gun pickups in the reverse case?

19 A. Yes.

20 Q. Were those people charged?

21 A. Yes.

22 Q. Quickly?

23 A. Well, they were arrested quickly.

24 Q. Well, they were probably charged very soon  
25 after their arrest.

1 A. I did criminal complaints, yes.

2 Q. What's to prevent you from filing -- well,  
3 what's to prevent the FBI or the Department of  
4 Justice from filing a criminal complaint against  
5 Mr. Duran in Portland?

6 A. I pushed for that. But the U.S.  
7 Attorney's Office there wanted results of  
8 fingerprints or DNA.

9 Q. There are no charges pending against  
10 Mr. Duran?

11 A. He hasn't been charged yet, but it's  
12 pending.

13 Q. So you did contact state prosecutorial  
14 agencies there to talk to them about Mr. Duran's  
15 status?

16 A. Yes, sir. I just want to say I wouldn't  
17 characterize it as on his behalf.

18 Q. Okay. Then why would you contact them at  
19 all?

20 A. I wanted them to know that he needed to be  
21 charged, because I had the same concern when I saw  
22 that he hadn't yet been -- or he had been released.  
23 I wanted to know why he had been released.

24 Q. Given Mr. Duran's behavior over the  
25 summer, why did the FBI sign him up at the beginning

1 of November for another confidential human source  
2 contract?

3 A. I'm not following, sir.

4 Q. Okay. Well are you aware that your  
5 colleagues in the Northwest signed a -- well, let me  
6 back up for a second. Locally here, the local FBI  
7 signed Mr. Duran up on March 25, 2015, to be a CHS,  
8 a confidential human source?

9 A. That's what our paperwork indicates. I  
10 believe you. I didn't meet him until August.

11 Q. Right. Because somebody else in your  
12 department was handling his case?

13 A. Yes, sir, and as such, I wouldn't have  
14 access to his information, like his records. So I'm  
15 not sure of the exact date.

16 Q. You wouldn't have access to his records  
17 once you took over his handling, his file?

18 A. I would then, yes.

19 Q. And would you have reviewed them just to  
20 see how he did, how he performed?

21 A. No. I'd ask the agent.

22 Q. And what was the response you got? What  
23 was the feedback you got about his ability to do the  
24 job?

25 A. That agent was Katie Brusuelas. She told

1 me he had phenomenal access to the SNM, was housed  
2 up at the Level 6 with some of the leaders, and that  
3 he was willing to testify and make recordings. She  
4 told me she had deployed a device, and he was in the  
5 process of making recordings. And I thought that  
6 sounded promising.

7 Q. And you reinstituted when you signed him  
8 up in the fall to keep recording?

9 A. To be clear, it's just a transfer. I  
10 didn't resign him. He was transferred to me. I met  
11 with him, questioned him about his access, his  
12 abilities, and yes, I deployed a different recording  
13 device or devices with him.

14 Q. Because he struggled with the first one.

15 A. I don't know that I blame him. I blame  
16 the device, and frankly -- I'll blame the device.

17 Q. Now, when you talked to Mr. Duran about  
18 using the device, you didn't give him a lot of  
19 instruction, did you?

20 A. No.

21 Q. Okay. One thing you did tell Mr. Duran is  
22 that he needed to get the recording -- he needed to  
23 get somebody speaking on the tape for you to believe  
24 it happened?

25 A. Yes, I typically tell all the informants

1 that; there needs to be a recording.

2 Q. And that's because you want solid  
3 evidence?

4 A. Yeah. I want to corroborate what they're  
5 telling me. I want to hear it myself, yes.

6 Q. Right. And if you can't hear it for  
7 yourself, it's like it never happened?

8 A. I just have to corroborate it through  
9 other means. I prefer the recording, but if I don't  
10 get the recording, we keep investigating and try to  
11 corroborate it through other means.

12 Q. Right. But you testified earlier in this  
13 case before this jury sat down, didn't you?

14 A. Oh, like pretrial hearings?

15 Q. Correct.

16 A. Yes, sir, I did.

17 Q. And during those pretrial hearings you  
18 testified, "Well, if it's not recorded, the  
19 conversation, in my mind, didn't happen."

20 A. That's what I tell the informants, yes.

21 Q. You want it on tape.

22 A. Yes.

23 Q. Is that because you're concerned about the  
24 honesty of the people you work with when you work  
25 with inmates in the Department of Corrections?

1 A. Sometimes.

2 Q. You're concerned about their integrity?

3 A. That is sometimes a concern that I have,  
4 especially if I'm just meeting them and I haven't  
5 tested them yet.

6 Q. And you hadn't really met Mr. Duran  
7 before?

8 A. No. I first met him in August.

9 Q. And that's when he told you that Mr. Baca  
10 was eager to kill the secretary, Gregg Marcantel?

11 A. I don't know that he told me that. I'd  
12 have to go back and look at the debrief reports, but  
13 he subsequently told me that, for sure.

14 MR. LOWRY: One moment, Your Honor.

15 THE COURT: Certainly.

16 MR. LOWRY: I'll pass the witness, Your  
17 Honor.

18 THE COURT: Thank you, Mr. Lowry.

19 Mr. Maynard, are you next? Okay, Mr.  
20 Maynard.

21 CROSS-EXAMINATION

22 BY MR. MAYNARD:

23 Q. Good afternoon, Mr. Acee.

24 A. Good afternoon.

25 Q. I'd like to clarify a few items that you

1 raised on direct examination to make sure the jury  
2 understands as clearly as possible your testimony.

3 You mentioned at one point in the direct  
4 examination that there were some other accusations  
5 of other murders involved in SNM.

6 A. Yes, sir.

7 Q. Okay. Now, Mr. Herrera is not charged in  
8 any of those, is he? Carlos Herrera?

9 A. No, sir.

10 Q. All right. Now, you mentioned reference  
11 to some state cases, especially, of course, Mr.  
12 Jerry -- the two Jerrys, Jerry Armenta and Montoya?

13 A. Yes, sir.

14 Q. And I think Tim Martinez also was charged.

15 A. Mario Rodriguez.

16 Q. Mario Rodriguez. I'm sorry. Now, Carlos  
17 Herrera was not charged in any of that, was he?

18 A. No, sir.

19 Q. All right. Now, you testified also that  
20 during the investigation, after the murder of Javier  
21 Molina in 2014, several people that Corrections, at  
22 least, felt were in some kind of influential or  
23 leadership ability were sent north or sent out of  
24 state, some of them.

25 A. Three people were sent out of state, and



1 several were sent to the North facility in Santa Fe.

2 Q. And out of the Southern -- out of the  
3 facility from Las Cruces?

4 A. Yes, sir.

5 Q. And some were sent to other places east  
6 and west, or were they all sent to PNM, if you know?  
7 If you recall.

8 A. I'm not sure. I know that three were sent  
9 out of state, and a group was sent north. But I  
10 couldn't tell you exactly who.

11 Q. Now, Mr. Herrera was not one of any of  
12 those that was sent out of state, was he?

13 A. He was not.

14 Q. Now, you also mentioned briefly -- you  
15 made reference to the structure or politics,  
16 disagreements, for instance, between Romero and the  
17 Archuleta political parties, whatever.

18 A. Good description, sir. Yes.

19 Q. Now, would it be at least -- it wouldn't  
20 be unfair to say the origin of that dispute was over  
21 a woman?

22 A. Correct.

23 Q. And if you look through your investigation  
24 and disagreements between inmates, you run into  
25 rivalries, you run into resentments over women, over

1 debts, over respect, et cetera; is that a fair  
2 summary?

3 A. Yes, sir.

4 Q. And it's not so easy to figure out, well,  
5 which one is an SNM issue and which one is an issue  
6 between a couple of inmates and their friends?

7 A. It depends.

8 Q. Right. It depends on a lot of facts.

9 A. Yes, sir.

10 Q. I mean, you can't do a roll call, like  
11 in -- at the State House, legislature in Santa Fe,  
12 and say who voted for what?

13 A. Correct.

14 Q. And a lot of that depends upon rumors.

15 A. I think rumors play a factor in politics.

16 Q. Right. Politics. And you mentioned back  
17 in 2014, around the time -- and before the time  
18 Mr. Molina was killed, there was some dissention,  
19 some politics and dissension within the wings,  
20 within the party, so to speak, if you want to  
21 call --

22 MR. CASTELLANO: Objection. I'm sorry.  
23 Calls for hearsay.

24 THE COURT: Why don't you lay a foundation  
25 as to, A, does he know it; and B, where he got the

1 information, so he can --

2 BY MR. MAYNARD:

3 Q. You interviewed a lot of people that were  
4 in and out of custody with the Corrections  
5 Department or on the street?

6 A. Yes, sir.

7 Q. People with tattoos that -- you saw them  
8 during the earlier direct examination?

9 A. Tattoos very similar.

10 Q. People that, by all appearances, appear to  
11 be, at one time or another, members of SNM?

12 A. Yes.

13 Q. Okay. And you ran into different opinions  
14 about different issues?

15 A. Yes.

16 Q. And you have made reference to murders,  
17 hits, during your testimony; correct?

18 A. Yes, sir.

19 Q. And the term "hit" is sort of a  
20 colloquialism, sort of a jargon for a gang, for any  
21 gang? It's informal English; correct?

22 A. Yes.

23 Q. It doesn't necessarily mean a murder. It  
24 can mean a beating, it can mean a sanction of any  
25 sort.

1           A.     I think it can mean a murder or an  
2 assault.

3           Q.     Or an assault. Now, you gathered  
4 information from various people that you felt were  
5 at one time or another, or still were, SNM members.  
6 And you went back and interviewed them on repeated  
7 occasions.

8           A.     Some would only talk to me once, or  
9 wouldn't talk to me at all.

10          Q.     That's true. That's fair.

11          A.     Others, I interviewed more than once.

12          Q.     And for instance, in preparation for this  
13 trial, you talked to several just within the past  
14 few weeks.

15          A.     Primarily the attorneys did, but I was  
16 present.

17          Q.     Right. And they had been interviewed  
18 before numerous times.

19          A.     Some of them had.

20          Q.     All right. Now, with respect to Mr.  
21 Herrera, the issues relate to events that happened  
22 almost three years ago, in 2014.

23          A.     Yes, sir.

24          Q.     And the witnesses have spoken with you or  
25 other agents of the FBI on prior occasions. This is

1 not just the past couple of months.

2 A. Correct.

3 Q. And over time, they've been receiving  
4 benefits, or certain privileges or expenses have  
5 been covered for them; correct?

6 A. No. Some of them received benefits for  
7 some of the time, but all of them have not received  
8 benefits all of the time.

9 Q. I understand. Right. Now, would it be  
10 fair to say that with some of these people that are  
11 going to come in and testify today that with the  
12 passage of time, they continue to come in with  
13 additional details that they recall about 2014?

14 A. Well, there were more than -- yes, in some  
15 cases there would be a second or third interview  
16 with more details, something that they remembered  
17 when they went back and thought about it more, yes.

18 Q. And while they thought about it more, many  
19 of them have been housed together with each other.  
20 Not all of them.

21 A. Well, I don't know that I'd say many of  
22 them. I'll agree that some of them were, yes.

23 Q. They could exchange stories; they've heard  
24 each other's recollections?

25 A. I don't know.

1 Q. You wouldn't know?

2 A. I don't know.

3 Q. But they had that opportunity.

4 A. If they had tier time together and chose  
5 to talk about those sorts of things, they certainly  
6 could have.

7 Q. In fact, you would expect them to talk  
8 about this from time to time. They would have a lot  
9 of time on their hands.

10 A. I don't know that I'd expect it, because  
11 we told them not to. So I would hope that they  
12 would follow our directions.

13 Q. Were there not occasions where they didn't  
14 follow your directions?

15 A. Yes, sir.

16 Q. Not all of them, but a significant number  
17 of them?

18 A. A few of them didn't follow my  
19 instructions.

20 Q. Right. So you're not sure to what extent  
21 they did or did not speak with each other?

22 A. No, sir.

23 Q. Talk with each other about their  
24 contemplated testimony in the future?

25 A. No, sir.

1 MR. MAYNARD: May I have just a moment,  
2 Your Honor?

3 THE COURT: Certainly.

4 BY MR. MAYNARD:

5 Q. Just a couple of other questions, Mr.  
6 Acee. With respect to the wiring of a couple of  
7 cooperators, you called them, they were in  
8 possession -- in custody in the Corrections  
9 Department at this time; correct?

10 A. Yes.

11 Q. And they were staying, according to the  
12 plan, the investigation, next to Mr. Herrera. I'm  
13 speaking about Mr. Cordova and Mr. Archuleta.

14 A. Yes, sir. They were.

15 Q. All right. Now, they were next to --  
16 right adjacent to Carlos Herrera for a period of  
17 several weeks, or at least a few weeks.

18 A. At least a few weeks. I had the dates  
19 when we were doing the pretrial stuff, and I don't  
20 recall them as I sit here today. But I agree it was  
21 at least a couple of weeks.

22 Q. And they knew who they were to target to  
23 try to elicit some relevant conversations --

24 A. Yes, sir.

25 Q. -- relevant about what happened on March 7

1 of 2014?

2 A. Correct.

3 Q. And they had the ability during this  
4 period of time of a few weeks, with respect to each  
5 other -- and this was about a year and a half,  
6 almost two years ago, in 2016?

7 A. Correct.

8 Q. And they had control of the on-off button  
9 for this recording device. They could turn it on  
10 and off whenever they wanted to.

11 A. Yes.

12 Q. And so you have no way of knowing for sure  
13 what was said when the recorder was off.

14 A. Correct.

15 Q. And you really have very little or no  
16 control over that.

17 A. I don't control that, no.

18 MR. MAYNARD: No further questions.

19 THE COURT: Thank you, Mr. Maynard.

20 Mr. Villa, do you have cross-examination  
21 of Mr. Acee on behalf of Mr. Perez?

22 MR. VILLA: Yes, Your Honor.

23 THE COURT: Mr. Villa.

24

25



1 CROSS-EXAMINATION

2 BY MR. VILLA:

3 Q. Good afternoon, Agent Acee.

4 A. Good afternoon.

5 Q. Mr. Perez is not charged in any other  
6 cases except this case; correct?

7 A. Correct.

8 Q. And in this case, he's only charged with  
9 the alleged murder and conspiracy to commit murder  
10 of Javier Molina.

11 A. Yes, sir.

12 Q. And as you testified about with Mr.  
13 Castellano, the first -- phase 1, if you will,  
14 included an indictment of individuals; correct?

15 A. Yes, sir.

16 Q. And many of those individuals were charged  
17 with the murder of Javier Molina.

18 A. Yes.

19 Q. And Mr. Perez was not included in that  
20 indictment, was he?

21 A. He was not.

22 Q. In fact, he wasn't included until the  
23 second round, phase 2, in April of 2016; correct?

24 A. Yes.

25 Q. And he was only included because of

1 conversations that he had with Billy Cordova; isn't  
2 that true?

3 A. No.

4 Q. Well, let me back up. He had a  
5 conversation with Billy Cordova that was recorded on  
6 a recording device in February of 2016; right?

7 A. Yes.

8 Q. And after those conversations, he was then  
9 indicted and charged in this case around about  
10 April?

11 A. Yes.

12 Q. And you talked about, in your direct  
13 examination, meeting Mr. Cordova. Do you remember  
14 that?

15 A. Yes.

16 Q. You said you met him at MDC, the jail in  
17 Bernalillo County, outside of Albuquerque.

18 A. Yes, sir.

19 Q. And you might need to just speak up just a  
20 little bit. Thank you, Agent.

21 It was your testimony that Mr. Cordova  
22 came in with a big smile on his face; right?

23 A. Yes.

24 Q. The guard said, "You know, I don't know;  
25 we're going to bring him in, but we're a little

1    afraid he might attack you."    I think that was your  
2    testimony.

3           A.    Those weren't the exact words, but...

4           Q.    Words to that effect?

5           A.    Yes.

6           Q.    And instead, it's your claim that he  
7    walked in there with big smile on his face; right?

8           A.    He did.

9           Q.    That's your testimony today.

10          A.    Yes.

11          Q.    And you remember testifying about this at  
12   the grand jury, don't you?

13          A.    Yes.

14          Q.    Isn't it true that at the grand jury, you  
15   said, "I'll spare you a long story, but basically I  
16   said, 'I'm with the FBI and we're going to target  
17   you.'"

18          A.    I said that later in the conversation.

19          Q.    Okay.   So you didn't tell the grand jury  
20   about the big smile, did you?

21          A.    If that's what you have there, I believe  
22   you.

23          Q.    Well, you don't have to take my word for  
24   it.   Do you want to see it?

25          A.    Sure.

1 MR. VILLA: May I approach?

2 THE COURT: You may.

3 MR. CASTELLANO: Page number, please, Your  
4 Honor?

5 MR. VILLA: I'm going to show him page  
6 101. You might want to look back at 100 of the  
7 April 21, 2016.

8 BY MR. VILLA:

9 Q. Agent Acee, there is the testimony that I  
10 just read to you where I indicated that you said,  
11 "I'll spare you a long story, but basically said,  
12 'I'm with the FBI. We're going to target you.'" I  
13 read that right?

14 A. Well, you're reading that right, but who  
15 are we talking about?

16 Q. I'll let you take a look at it, and we'll  
17 see if we're talking about Mr. Cordova. Why don't  
18 we flip back to page 100. And -- let's see. I  
19 don't believe you indicate the person's name, but  
20 I'll let you take a look at it, and tell me if we're  
21 talking about Billy Cordova.

22 A. Can you turn the page?

23 Q. Absolutely.

24 A. Okay. Thank you.

25 Q. Are you talking about Billy Cordova?

1 A. Yes.

2 Q. Can you show me in there where you talked  
3 about the big smile?

4 A. Yeah, that would be contained in the part  
5 where I said, "I'll spare you a long story."

6 Q. So "I'll spare you a long story" is where  
7 you told the grand jury about the big smile?

8 A. No, the opposite. I'm responding to the  
9 question I was asked at grand jury about that, and I  
10 said, "I'll spare you a long story, but basically,"  
11 and then you quoted me.

12 Q. Well, let's talk a little bit about that  
13 long story. You told Mr. Cordova that you were  
14 after him.

15 A. At one point in that conversation I did.  
16 Initially, I didn't start the conversation with him.  
17 A couple other agents did.

18 Q. You told Mr. Cordova that you were going  
19 to charge him with racketeering, didn't you?

20 A. I told him that we were preparing to do  
21 that.

22 Q. And as a matter of fact, you had another  
23 agent there with you, Agent Neale?

24 A. Yes.

25 Q. And Agent Neale -- one of his job duties

1 in this case was to write up what we call overt acts  
2 against Billy Cordova; right?

3 A. Correct.

4 Q. And overt acts are the acts or the things  
5 that somebody does in furtherance of a conspiracy;  
6 right?

7 A. In a racketeering enterprise, yes, sir.

8 Q. And so Agent Neale was going to write up  
9 the things that Mr. Cordova was going to be accused  
10 of in a future case; right?

11 A. Yes.

12 Q. And instead of that happening, during the  
13 conversation that we're talking about you told Mr.  
14 Cordova that if he worked with you, you wouldn't  
15 charge him; right?

16 A. I think that was in a follow-up  
17 conversation. I don't know if I said it that first  
18 meeting or the second meeting, which was within a  
19 couple days.

20 Q. So within a couple of days or maybe in the  
21 first meeting you conveyed to Mr. Cordova that he  
22 wouldn't be charged with racketeering in exchange  
23 for cooperation?

24 A. Well, I said I wouldn't recommend him for  
25 charges, yes, in exchange, yes.

1 Q. As a matter of fact, in Mr. Cordova's  
2 presence you told Agent Neale that he didn't have to  
3 work on those overt acts for Mr. Cordova if Mr.  
4 Cordova was going to work for you.

5 A. I don't think the conversation went like  
6 that. But at some point I did tell Agent Neale he  
7 could stop working on Cordova's overt acts and work  
8 on someone else's.

9 Q. And you did that in front of Mr. Cordova,  
10 didn't you?

11 A. I know I introduced it to. I don't know  
12 if we had that conversation. I definitely had it  
13 with Neale. I don't know if I had with Cordova.

14 Q. Would you disagree with me that it was  
15 clear to Billy Cordova that you weren't going to  
16 pursue racketeering charges against him if he  
17 cooperated?

18 A. I believe that was clear to him.

19 Q. And you made it clear to him, didn't you?

20 A. Yes.

21 Q. And this communication that you had with  
22 Mr. Cordova took place in approximately January of  
23 2016; agreed?

24 A. Yes.

25 Q. And within just a few weeks, Mr. Cordova

1 is then placed in PNM North, in the Level 6  
2 facility; right?

3 A. Yes.

4 Q. The Level 6 facility is in PNM North in  
5 Santa Fe. It's the most severe lockdown that the  
6 State of New Mexico has; correct?

7 A. It's their most secure facility.

8 Q. All right. And the individuals placed in  
9 that -- sometimes they refer to that as solitary  
10 confinement?

11 A. I think the inmates do. I don't think the  
12 Department of Corrections does.

13 Q. Okay. The Department of Corrections gives  
14 it a cleaner name, like administrative segregation  
15 or something?

16 A. That's probably a question for them.

17 Q. Are you aware of the name they give it?

18 A. They have lot of different programs in  
19 there. Let me try to think of what Corrections  
20 calls it. I'll have to get back to you. I'm not  
21 sure exactly what they call it.

22 Q. So in any case, you knew that Rudy Perez  
23 had been there at PNM North at the time Billy  
24 Cordova was then moved to PNM North; true?

25 A. Yes.



1 Q. And Mr. Perez was in a downstairs pod in  
2 the corner cell; right?

3 A. I now know that. At the time, I just knew  
4 he was at the North.

5 Q. Okay. But you were working with the New  
6 Mexico Department of Corrections in this  
7 investigation; right?

8 A. Yes, sir.

9 Q. And so somebody knew where Rudy Perez was;  
10 right?

11 A. Somebody did.

12 Q. Somebody you were working with.

13 A. Yes.

14 Q. And they knew -- or they put Rudy Perez in  
15 a corner cell; right?

16 A. I don't think he had a choice. So yes.

17 Q. Well, Mr. Perez didn't have a choice. But  
18 I'm saying the Department of Corrections put him  
19 there.

20 A. Yes.

21 Q. And in the corner cell, there is only one  
22 cell next to you; true?

23 A. True.

24 Q. So if you're going to talk to somebody  
25 next door to you, that's the only person you can

1 talk to?

2 A. If you're talking through the vents and  
3 you're in your cells, yes.

4 Q. And I want to ask you about that. You  
5 talked about how even though they're in these  
6 lockdown cells, the folks can talk to each other  
7 through the vents; right?

8 A. Yes.

9 Q. And isn't there a vent underneath the bed,  
10 that if one inmate is in one cell talking through  
11 the vent, and another inmate is another cell talking  
12 through the vent, they could hear each other?

13 A. Yes. They have a shared vent, if you  
14 will. Yeah.

15 Q. So Mr. Perez was in the corner cell and  
16 Mr. Cordova was placed next to him; right?

17 A. Yes.

18 Q. And they talked to each other through the  
19 vents?

20 A. They did.

21 Q. And you gave Mr. Cordova, after you had  
22 this conversation with him about not charging him  
23 for racketeering, a recording device; right?

24 A. Yes.

25 Q. And I think you referred to it in some of

1 your direct testimony as a wire, but it's actually a  
2 little recording device that has an on-and-off  
3 button so they can record; right?

4 A. That particular device does. I guess we as  
5 agents call them all wires. The devices are  
6 different. But yes, what you're referring to was a  
7 small device with an on-and-off switch.

8 Q. Mr. Cordova's device is not one that you  
9 can listen to or have another agent listen to while  
10 he's recording.

11 A. It is not real-time or live, no.

12 Q. He records it, turns it off and on, gives  
13 it back, it makes its way back to you, and then  
14 you're able to listen to it?

15 A. There is a process; but ultimately, yes.

16 Q. Okay. So it's not like a wiretap with a  
17 phone where you can actually hear what's going on?

18 A. Not real-time.

19 Q. Or a real-time wire, like when you're  
20 talking about the controlled buys, where you guys  
21 can hear what's going on; right?

22 A. Correct.

23 Q. So Mr. Cordova is, within weeks of your  
24 meeting with him at the Bernalillo County jail,  
25 placed next to Rudy Perez and starts having a

1 conversation with him.

2 A. Yes, sir.

3 Q. Let's talk about the timeframe of that.

4 This happens 23 months after the Javier Molina  
5 murder, does it not?

6 A. Yes.

7 Q. The Javier Molina murder took place March  
8 7 of 2014; true?

9 A. Yes.

10 Q. And this recording that we're talking  
11 about occurred in February of 2016.

12 A. Correct.

13 Q. And since that time, there have been a lot  
14 of conversations about the Javier Molina murder,  
15 hadn't there?

16 A. With me?

17 Q. Conversations -- well, let me back up.  
18 You did some interviews of folks and learned  
19 information about the Javier Molina murder.

20 A. Yes, sir.

21 Q. And some of that information came from  
22 people that didn't have firsthand knowledge of the  
23 murder.

24 A. Correct.

25 Q. So people were talking.

1 A. Yes.

2 Q. Right? And I think you testified about  
3 Billy Cordova that he was a popular and well-known  
4 member of the SNM.

5 A. Yes, sir.

6 Q. When you say "popular," what do you mean  
7 by that?

8 A. I usually refer to him as kind of a rising  
9 star, well-liked, willing to put in work.

10 Q. So a lot of people knew him.

11 A. I believe so.

12 Q. Do you have any reason to believe Mr.  
13 Perez didn't know that Mr. Cordova was popular and  
14 well-known?

15 A. He probably did. I've never talked to Mr.  
16 Perez, but I assume -- others described him that  
17 way.

18 Q. And you agree with me that prior to  
19 February 2016, when Mr. Cordova was recording Mr.  
20 Perez, that at that point Mr. Perez had not been  
21 charged in the Javier Molina murder?

22 A. No, he wasn't charged until April.

23 Q. All right. And some of the folks who were  
24 actually what I'll call the hands-on killers of  
25 Javier Molina had been charged; correct?

1 A. Yes, sir. They were charged in December.

2 Q. So for instance, Jerry Montoya was one of  
3 the individuals charged in the first indictment;  
4 right?

5 A. Yes, sir.

6 Q. And so I believe that was Government's  
7 Exhibit 605, which I'll put up on the screen here  
8 for you. He got charged in the first round; right?

9 A. Yes.

10 Q. And this is Jerry Montoya that we're  
11 looking at here. And you can see the date,  
12 12/3/2015.

13 A. Yes, sir.

14 Q. That's the date the photo was taken?

15 A. Yes.

16 Q. And that's when the roundup happened of  
17 the first guys in phase 1; right?

18 A. Yes.

19 Q. So Mr. Montoya -- you'd agree with me he's  
20 got a pretty big smile in this picture, wouldn't  
21 you?

22 A. He does.

23 Q. And this is after he's been arrested by  
24 you or somebody on your team for the murder of  
25 Javier Molina?

1           A.    I don't know that we told him what the  
2 charges were yet, but he knows he's been arrested by  
3 the FBI, certainly.

4           Q.    All right. And he had actually been  
5 charged by the State of New Mexico for the murder of  
6 Javier Molina; right?

7           A.    Yes, sir.

8           Q.    And you know that he actually stabbed  
9 Javier Molina with his own hands.

10          A.    I am aware of that.

11          Q.    And Javier Molina -- we saw some pictures  
12 of it in opening -- had some stab wounds right  
13 around his chest, over his heart?

14          A.    Yes.

15          Q.    And we saw pictures of the shanks that  
16 were used allegedly to stab Javier Molina?

17          A.    I don't know. That was Ms. Jacks'  
18 presentation, I think. I'm not sure.

19          Q.    Did you see the pictures?

20          A.    I did; not for very long. They probably  
21 were. I just want to examine them a little closer.

22          Q.    No, I understand that. But do you know if  
23 it was Jerry Montoya that stabbed him in the heart,  
24 or Jerry Armenta, the other defendant?

25          A.    I couldn't tell you which one stabbed him

1 in the heart. I just know that both committed and  
2 were successful in stabbing Mr. Molina.

3 Q. Well, Jerry Montoya is cooperating with  
4 you, isn't he?

5 A. Yes.

6 Q. Did you ask him how many times he stabbed  
7 Javier Molina in the heart?

8 A. I didn't ask him how many times he stabbed  
9 him in the heart. I asked him to show me what  
10 happened. And I laid on the ground so that he  
11 could -- as if I were Mr. Molina, so he could stand  
12 over me and show me.

13 Q. Did he show you a stabbing motion to your  
14 heart?

15 A. To my upper body area, yes.

16 Q. What about your heart?

17 A. It's in my upper body, yes.

18 Q. And he stabbed over that?

19 A. Yes.

20 Q. Okay. One of the other people indicted in  
21 the first round is Jerry Armenta. I believe there  
22 is a picture of him, Government's Exhibit 606?

23 A. He was arrested, yes.

24 Q. This is Jerry Armenta?

25 A. Yes, sir.



1 Q. Also arrested on December 3, 2015?

2 A. Yes, sir.

3 Q. Did you ask him whether he stabbed Javier  
4 Molina in the heart?

5 A. Again, I just asked him to walk me through  
6 it, and he did. I don't think he said he stabbed  
7 him in the heart, though. He did say he stabbed  
8 him.

9 Q. Where?

10 A. His upper body, as well. It sounded like  
11 it was pretty chaotic, and it sounded like they were  
12 trying to get into the same areas.

13 Q. I think we heard from Ms. Armijo in  
14 opening statement that these two men stabbed Javier  
15 Molina 43 times?

16 A. I recall hearing that.

17 Q. Did you ask Mr. Armenta how many times he  
18 stabbed Javier Molina?

19 MR. CASTELLANO: Objection, calls for  
20 hearsay.

21 MR. VILLA: It's just a question.

22 THE COURT: He can answer this question.  
23 It's a yes-or-no question.

24 A. Yes.

25

1 BY MR. VILLA:

2 Q. You did ask him?

3 A. Yes.

4 Q. Did you ask Jerry Montoya how many times  
5 he stabbed Javier Molina?

6 A. Yes.

7 Q. Did they answer you?

8 A. They answered.

9 Q. Both of them?

10 A. Yes.

11 Q. Let's talk about Mario Rodriguez. That's  
12 Government's Exhibit 586. He was also charged in  
13 the first round; right? Whoops.

14 A. Yes, sir.

15 Q. And Mr. Rodriguez -- his picture here --  
16 was arrested on December 3, 2015; right?

17 A. Yes, sir.

18 Q. And Mr. Rodriguez played a part -- or he  
19 was charged in the first round with the murder of  
20 Javier Molina and conspiracy to murder Javier  
21 Molina; right?

22 A. And other charges, yes.

23 Q. And in other charges.

24 A. Yes.

25 Q. So not just those two. He had others.

1 A. Correct.

2 Q. What were those other charges?

3 A. Violent crime in aid of racketeering,  
4 assault causing great bodily injury for an incident  
5 up at PNM.

6 Q. In the course of your investigation, did  
7 you learn about the type of reputation Mario  
8 Rodriguez had?

9 A. Yes.

10 Q. What was that?

11 MR. CASTELLANO: Objection, calls for  
12 hearsay.

13 MR. VILLA: I think this is part of his  
14 investigative conclusion, Your Honor.

15 THE COURT: Well, I think I'll allow him  
16 to testify and tell the jury they can't consider  
17 this for the truth. But this is going to Mr. Acee's  
18 investigation, and so I'll allow it.

19 So don't consider this for the truth of  
20 the matter, but only for the information that Mr.  
21 Acee knew as part of his investigation.

22 BY MR. VILLA:

23 Q. Go ahead, sir.

24 A. You'd like me to explain what I learned  
25 about Mr. Rodriguez in terms of his SNM membership?

1 Q. His reputation.

2 A. His reputation. He's a good soldier.  
3 He's very dedicated to the mission of the SNM and  
4 the ethos that they stand for, for a long time, and  
5 was probably, in my opinion, one of their more  
6 fierce soldiers.

7 Q. Scary?

8 A. Well, in the right circumstances, I would  
9 probably be concerned with him. But he's a  
10 dangerous man.

11 Q. And you investigated a number of violent  
12 crimes that Mario Rodriguez allegedly committed,  
13 didn't you?

14 A. Yes, sir.

15 Q. Very violent?

16 A. Well, he was involved in some violent  
17 incidents, yes.

18 Q. And when I say "very violent," I mean more  
19 violent than some of the other violent acts that you  
20 investigated in this case.

21 A. I don't agree.

22 Q. You don't think so?

23 A. No, I won't deny they were violent. But  
24 to me, there are other -- in my opinion, in my  
25 experience, "very violent" to me is like

1 decapitation and stuff like that. He's a violent  
2 man.

3 Q. And he had a reputation for being fierce.

4 A. Yes.

5 Q. And you'd agree with me that he played a  
6 large role in orchestrating the murder of Javier  
7 Molina?

8 A. He played a significant role, yeah.

9 Q. One of other individuals that was indicted  
10 in the Javier Molina murder was Timothy Martinez.  
11 That's Government's Exhibit 561?

12 A. Yes, sir.

13 Q. There is Mr. Martinez there on your  
14 screen; right?

15 A. Yes.

16 Q. So these four individuals that we talked  
17 about get charged in phase 1, and in your  
18 investigation you learned that Mr. Martinez was a  
19 good friend of Javier Molina; right?

20 A. I did.

21 Q. And his job in this alleged hit was to  
22 incapacitate Javier Molina so that Jerry Montoya and  
23 Jerry Armenta could stab him to death?

24 A. I think it was more than that, but you're  
25 correct.

1 Q. It was even more than that.

2 A. I think it was to lure him into his room  
3 to use drugs, and then incapacitate him -- excuse  
4 me. Let me drink some water.

5 Q. Go ahead. Now, all four of these  
6 individuals that we just talked about have  
7 cooperated with you.

8 A. Yes.

9 Q. After they got charged in the indictment  
10 in phase 1?

11 A. Correct.

12 Q. And these individuals have entered plea  
13 agreements with the Government, have they not?

14 A. They have.

15 Q. And one of the things that they can get  
16 from their plea agreements if they testify and  
17 cooperate is a reduction in their sentence?

18 A. It's up to the Judge.

19 Q. Okay. But that's something that the  
20 Government can ask for in exchange for their  
21 cooperation, is it not?

22 A. Yes.

23 Q. I'm sorry?

24 A. Yes.

25 Q. Otherwise, they're facing life sentences

1 for the murder of Javier Molina; true?

2 A. True.

3 Q. If they cooperate, they might not have to  
4 spend the rest of their lives in prison.

5 A. It's up to the Judge.

6 Q. But it's possible.

7 A. Yes.

8 Q. Because of their cooperation.

9 A. Yes.

10 Q. Now, let's go back to what we were talking  
11 about with Mr. Perez. Billy Cordova was never  
12 charged in phase 1, phase 2, or phase 3, or any  
13 other phase of this investigation, was he?

14 A. He was not.

15 Q. Because he agreed to cooperate.

16 A. No.

17 Q. Well, in any case, that decision wasn't  
18 yours to make, was it?

19 A. No.

20 Q. Okay. And as we sit here today, Billy  
21 Cordova has never been charged with racketeering or  
22 any other crime that you've been investigating?

23 A. That's true.

24 Q. And before Billy Cordova recorded Rudy  
25 Perez in February of 2016, you knew, didn't you,

1 that there were rumors that Mr. Perez was  
2 cooperating?

3 A. No.

4 Q. You know that now, don't you?

5 A. I do.

6 Q. And you know that Mr. Cordova used those  
7 rumors to exploit Mr. Perez?

8 A. I don't agree.

9 Q. Well, we'll ask Mr. Cordova about that.  
10 All right?

11 A. Yes, sir.

12 Q. You would agree with me that oftentimes --  
13 in the course of your investigation you learned that  
14 there were rumors that somebody might be  
15 cooperating; right?

16 A. Yes.

17 Q. And if there is a rumor that somebody is  
18 cooperating with law enforcement, that person could  
19 be in jeopardy.

20 A. Yes.

21 Q. Their life could be in jeopardy.

22 A. Yes.

23 Q. So if there were a rumor about Rudy Perez,  
24 his life could be in jeopardy.

25 A. Could be.



1 Q. And you would agree with me, at least,  
2 that -- you may not have known it then, but you know  
3 it now -- at the time that Mr. Perez talked to Billy  
4 Cordova, that there were rumors he was cooperating  
5 with the FBI?

6 A. I don't know that we heard that.

7 Q. Well, that there were rumors that he was  
8 cooperating in the investigation because he had not  
9 been charged in phase 1.

10 A. There were rumors that he may have  
11 cooperated. Yes, I do recall that.

12 Q. So let me ask you this. In the course of  
13 your investigation, in interviewing the members  
14 of -- alleged members of SNM and other gang members  
15 and things like that, did you come to learn that  
16 sometimes people take responsibility for things they  
17 don't do?

18 A. Yes.

19 Q. So a member might take responsibility for  
20 a crime they didn't commit?

21 A. Yes.

22 Q. Or for playing a role in a crime that they  
23 didn't actually play?

24 A. Yes.

25 Q. And part of the reason they do that is to

1 look like they're tough?

2 A. I guess.

3 Q. Well, I don't want you to guess. Let me  
4 ask you: In the course of your investigation, did  
5 you reach conclusions about why people take  
6 responsibility for things they don't do?

7 A. It's incredibly foolish. I don't know. I  
8 confronted guys on that before, so I'm not sure how  
9 to answer that. They do it. Why they're doing it I  
10 don't know, because I think it's a bad idea.

11 Q. One reason might be so that people don't  
12 think they're a cooperator?

13 A. Could be.

14 Q. That's a good reason?

15 A. Until the truth is found out, I guess.

16 Q. And if you're going to take responsibility  
17 for something you didn't do, perhaps because you  
18 don't want people to think you're a cooperator, it  
19 might be a good idea to say it to someone who is  
20 well-known and popular in the gang?

21 A. Yes.

22 Q. Because if they're well-known and they're  
23 popular in the gang, they might spread the word  
24 that, oh, you're not a cooperator; you actually  
25 helped out?

1 A. I suppose that could happen.

2 Q. Okay. So I want to back up just a little  
3 bit.

4 The testimony that you provided in your  
5 direct and that you've provided so far, that's all  
6 based on the investigation that you began -- I think  
7 you testified you began it in February or March of  
8 2015?

9 A. Yes, sir.

10 Q. So your knowledge about the SNM and your  
11 label by the FBI as a subject matter expert in SNM  
12 comes from that investigation?

13 A. Solely.

14 Q. And in the course of your investigation,  
15 didn't you learn -- or at least were you  
16 investigating whether there was a division in the  
17 SNM about whether to kill Javier Molina?

18 A. Yes.

19 Q. So some folks wanted to, and some folks  
20 didn't?

21 A. Yes.

22 Q. So it's certainly possible that some folks  
23 decided to act on that, and other folks didn't?

24 A. That's what I believe, yes.

25 Q. That's what you believe happened in this

1 case.

2 A. Yes, sir.

3 Q. And you were investigating, I think you  
4 said, some cold-case homicides. Did that include  
5 all the homicides that you were investigating, or do  
6 you consider them all cold cases, or were there  
7 active homicides you were investigating, as well?

8 A. Most of them are cold, but there were a  
9 couple still active.

10 Q. And how many of those homicides were you  
11 investigating Billy Cordova for?

12 A. Three.

13 Q. Three homicides?

14 A. Yes, sir.

15 Q. Do you know how many people Billy Cordova  
16 has actually killed?

17 A. He's told me he's not killed anyone. But  
18 to answer your question, I don't know.

19 Q. All right. And as we sit here today, Mr.  
20 Cordova hasn't been charged with any of the  
21 homicides that you've been investigating.

22 A. One, yes, sir. What he's presently doing  
23 time for.

24 Q. Well, but that was actually charged by the  
25 Bernalillo County DA; right?

1           A.    Yes, sir, it was.  We were looking at it.  
2   I wanted to answer your question.

3           Q.    That's fair.

4           A.    It was one -- to me, it doesn't matter who  
5   is looking at it or charging it; we're still looking  
6   at it, too, because again, as you know, sir, it  
7   could fall under the racketeering.

8           Q.    So you did not bring that homicide into a  
9   racketeering case, did you?

10          A.    No, sir.

11          Q.    You just left it as it was, after Billy  
12   Cordova agreed to cooperate.

13          A.    I didn't leave it.  I wanted to charge  
14   him.

15          Q.    But you didn't.

16          A.    No.

17          Q.    And that's not all you investigated.  
18   Well, excuse me.  That's not all your investigation  
19   uncovered that Billy Cordova did, is it?

20          A.    No.

21          Q.    You were testifying earlier about some  
22   drug trafficking and an individual named Christopher  
23   Garcia?

24          A.    Yes, sir.

25          Q.    In the course of your investigation, you

1 learned that Billy Cordova was involved in some of  
2 that drug trafficking.

3 A. Yes.

4 Q. Billy Cordova has not been charged for his  
5 role in that drug trafficking, has he?

6 A. No.

7 Q. You've also learned in the course of your  
8 investigation that Mr. Cordova had a role in the  
9 murder of Javier Molina.

10 A. I'm not sure that's correct.

11 Q. Well, let me ask the question this way.  
12 Before Javier Molina was killed, did Cordova agree  
13 that he should be killed?

14 A. Yes. I say that because I think when  
15 Billy was an active member, he believed all  
16 informants should be killed.

17 Q. But isn't it true that Billy Cordova told  
18 you that he thought Javier Molina should be killed?

19 MR. CASTELLANO: Object, Your Honor. It  
20 wasn't Agent Acee. It was a different agent.

21 THE COURT: Well, if he knows the answer,  
22 he can answer it.

23 A. I'm not sure. I know his philosophy on it  
24 was that informants should be killed. I don't know  
25 that I talked to him about specifically Molina.

1 BY MR. VILLA:

2 Q. Fair enough. But on the side of the  
3 divide between whether Javier Molina should or  
4 should not be killed, Cordova was on the side of  
5 should.

6 A. Yes.

7 Q. And Cordova -- well, strike that. You  
8 talked about how you handle informants and open them  
9 and close them and pay them and that sort of thing.  
10 Do you remember that?

11 A. Yes, sir.

12 Q. So Billy Cordova was -- after you met with  
13 him in Bernalillo County was opened up as an  
14 informant by you; true?

15 A. True.

16 Q. And Mr. Cordova was provided money by  
17 you -- or the FBI.

18 A. Yes.

19 Q. He was provided \$650 in what you would  
20 call payments for services as an informant?

21 A. That would be that \$50 amount, average,  
22 yes.

23 Q. So he got \$50 a month put on his books at  
24 the prison to use; right?

25 A. Yes.

1 Q. And that added up to \$650?

2 A. That sounds right.

3 Q. Do you want to look at the paperwork that  
4 reflects that?

5 A. I believe you, sir.

6 Q. Okay. Was he also given money for food?

7 A. It's part of that.

8 Q. Well, it's over and above the \$650, isn't  
9 it?

10 A. If there's additional receipts there, then  
11 it's above, yes.

12 Q. You don't --

13 A. I'd want to see the aggregate total. I'd  
14 have to look at his paperwork. Off the top of my  
15 head -- I'm sorry to interrupt you. I just don't  
16 know.

17 Q. I was interrupting you. I'm sorry. If  
18 you looked at the paperwork, that might refresh your  
19 recollection?

20 A. Yes.

21 MR. VILLA: May I approach?

22 THE COURT: You may.

23 BY MR. VILLA:

24 Q. Agent Acee, I'll show you some paperwork  
25 from the United States Attorney's Office, and look



1 at page 3, Bates No. 30711. Does this refresh your  
2 recollection about how much money Billy Cordova was  
3 paid?

4 A. Yes, sir.

5 Q. So \$650 for informant work; right?

6 A. Yes.

7 Q. \$100 for food?

8 A. Yes.

9 Q. \$200 for telephone expenses?

10 A. No. I can explain that.

11 Q. Okay. Go ahead.

12 A. Well, I've got to go back and look at his  
13 records. I'll give you an example. Like Eric Duran  
14 should have telephone expense, and that's me paying  
15 for the wire phone. The way the bureau has it, I  
16 have to account for it somewhere, so it's CHS, or a  
17 confidential human source, an informant expense. I  
18 just have to put it under telephone expense. But  
19 that's for the wiretap, so --

20 Q. Did Billy Cordova get a phone?

21 A. We didn't deploy a phone, but there were  
22 some instances where we purchased phones and then we  
23 realized it wouldn't work. Based on where in the  
24 facility they were, there was no signal. So I'd  
25 have to do research to figure out if I purchased a

1 phone and a plan. That's my initial thought, when I  
2 look at that, that we must have bought a phone.

3 Q. But you don't disagree with me that this  
4 says the aggregate total for Billy Cordova is \$950?

5 A. That's what it says.

6 Q. And it includes a \$200 phone expense.

7 A. Yes, sir.

8 Q. And that was money paid to Billy Cordova  
9 when he was opened as an informant; right?

10 A. No. That's just money that --

11 Q. Not the phone. I guess the other money.

12 A. Yeah. It wasn't a one-time payment, like,  
13 "Hey, you're open, and here's that money." That's a  
14 total of -- you know, we might put \$150 in, and then  
15 say, "Okay, that's for the next three months,"  
16 because we didn't want to go up to the penitentiary  
17 every month. But that is what he was paid.

18 Q. And you said that the money could be used  
19 for purchasing things in the commissary like food or  
20 hygiene items, other things like that; right?

21 A. Yes, sir. I've actually never seen the  
22 commissary, so I don't know what's in there. But my  
23 understanding of working with Corrections is,  
24 they're allowed to use so much money each month for  
25 commissary, and that's what that money was intended

1 for.

2 Q. I think it was your testimony that they  
3 could purchase anything that the prison allows them  
4 to purchase; right?

5 A. It's up to the prison, so, yes.

6 Q. Okay. But you know, in the course of your  
7 investigation, that other things get purchased in  
8 prisons that aren't allowed to be purchased; right?

9 A. Are we talking about drugs or --

10 Q. Yeah, I'm talking about drugs.

11 A. Yes.

12 Q. And other stuff that's contraband?

13 A. Yes. There is an underground economy, for  
14 sure.

15 Q. And the way -- at least one way that an  
16 inmate might get something from the underground  
17 economy contraband is by trading for something that  
18 they purchased in the commissary.

19 A. Yes.

20 Q. Or using money that they have on their  
21 books to purchase commissary for another inmate in  
22 exchange for contraband.

23 A. I think that's possible.

24 Q. So you can't say, as you sit here today,  
25 that some of that money Mr. Cordova received wasn't

1 used and ultimately end up in the underground  
2 economy for contraband.

3 A. I don't know how Mr. Cordova spent his  
4 money.

5 Q. But you do know, don't you, that Mr.  
6 Cordova is still in prison today.

7 A. Yes.

8 Q. And less than a month and a half ago, he  
9 used drugs in prison, didn't he?

10 A. I'm not sure I have that information.

11 Q. Now, you testified, Agent Acee, that you  
12 didn't think you have that information. Is that  
13 because you don't remember, or you're not sure, you  
14 don't know?

15 A. I have a lot of information in my head. A  
16 lot of informants. I'm trying to remember if Mr.  
17 Cordova used drugs in the last month and a half and  
18 how I know that.

19 Q. If I showed you a letter from Mr.  
20 Castellano, might that refresh your recollection?

21 A. Yes.

22 MR. VILLA: May I approach, Your Honor?

23 THE COURT: You may.

24 MR. CASTELLANO: Your Honor, once again,  
25 that was the wrong witness. We would stipulate to

1 that fact. I think they just have the wrong witness  
2 they're asking that information from. We'll  
3 stipulate.

4 THE COURT: You accept the stipulation?

5 MR. VILLA: The stipulation is in the last  
6 month and a half Mr. Cordova used -- and I'd like to  
7 read the drugs.

8 MR. CASTELLANO: We can stipulate to that  
9 as a fact. I'll allow him to read it into the  
10 record. That's information our office provided to  
11 the defense.

12 THE COURT: All right. Go ahead.

13 MR. VILLA: Your Honor, the stipulation  
14 would be that Mr. Cordova last used drugs  
15 approximately one and a half months ago. This is in  
16 a letter dated January 29, 2018, and the drugs  
17 listed are Suboxone, methamphetamine, heroin, spice,  
18 and prescription medications, while incarcerated in  
19 Clayton.

20 MR. CASTELLANO: We stipulate to those  
21 facts, Your Honor. That's true.

22 BY MR. VILLA:

23 Q. So Agent Acee, if you didn't know it, you  
24 know it now; right?

25 A. Yes, sir.

1 Q. Do you have any idea how he bought those  
2 drugs?

3 A. Sounds like they were having parties up in  
4 Clayton.

5 Q. Do you have any idea how Mr. Cordova  
6 bought those drugs?

7 A. No.

8 Q. Speaking about parties, would you agree  
9 with me that there was a party at PNM for some of  
10 the informants?

11 A. Are you referring to something I would  
12 have attended?

13 Q. Well, I don't know. Did you attend a  
14 party?

15 A. I'm trying to remember what it was. Their  
16 family was there. I wouldn't call it a party, but  
17 there was some kind of social engagement that I  
18 attended with other agents. Their family members  
19 were there.

20 Q. Where was the party?

21 A. You keep calling it a party.

22 Q. Where was the social engagement?

23 A. It was at PNM. I don't remember what part  
24 of the facility.

25 Q. PNM up in Santa Fe?

1 A. Yes, sir.

2 Q. And which cooperating witnesses were in  
3 attendance?

4 A. I'm going off memory here, and I helped  
5 prepare a document that actually lists who. But  
6 based on memory, Benjamin Clark. Robert Martinez  
7 may have been there. He kind of keeps to himself,  
8 though. Jerry Armenta.

9 Q. Jerry Armenta who we saw a minute ago?

10 A. Yes, sir.

11 Q. The same Jerry Armenta that stabbed Javier  
12 Molina to death?

13 A. That's the same person.

14 Q. Okay. Who else was there? Let me ask you  
15 this. Was Billy Cordova there?

16 A. He may have been. The reason I'm  
17 hesitating is: Not all the cooperators came on at  
18 the same time, so they joined that program up there  
19 at different times and then some left it. It's  
20 tough. I had to go back and research my records to  
21 come up with that list that I provided to the U.S.  
22 Attorney's Office.

23 Q. So there was a social engagement.

24 A. It was like -- yes, it was definitely a  
25 social engagement. I thought it was -- Corrections

1 was doing some kind of programming graduation or  
2 something.

3 Q. And the families were there?

4 A. Not all the guys, but a few guys had  
5 family members there.

6 Q. Some other agents were there?

7 A. Yes.

8 Q. Who else was there?

9 A. Just from the FBI?

10 Q. No. How about anybody from the U.S.  
11 Attorney's Office?

12 A. No one. Just us and Corrections.

13 Q. You and Corrections. When you say  
14 "Corrections," are you talking about the Security  
15 Threat Investigation Unit, STIU?

16 A. Anytime we're walking around in the  
17 facility, they're usually with us, escorting and  
18 whatnot. So I'm sure they were there. Mr. Myers  
19 was there, who I talked about earlier being a deputy  
20 secretary at that time. Myself, and then two of the  
21 agents that I was training and were part of the  
22 investigation, Joe Sainato and Thomas Neale.

23 Q. Thomas Neale?

24 A. Yes, sir.

25 Q. The same Neale that you had tasked to



1 write up overt acts in the racketeering case against  
2 Billy Cordova?

3 A. Yes, sir.

4 Q. Who you told to stop doing that when Mr.  
5 Cordova cooperated?

6 A. Yes.

7 Q. The same guy?

8 A. It is.

9 Q. At this social engagement, was there food?

10 A. Yes.

11 Q. The prison food, the kind they get from  
12 the cafeteria?

13 A. No.

14 Q. What kind of food?

15 A. Pizza.

16 Q. Who got the pizza?

17 A. Mr. Myers.

18 Q. Mark Myers?

19 A. Yes.

20 Q. He's one of the individuals that is part  
21 of your investigative group?

22 A. Yes, sir.

23 Q. Anything else besides pizza?

24 A. I think there were drinks, soda or juice.

25 Q. Okay.

1 A. I didn't eat, so I don't know. I didn't  
2 really pay attention.

3 Q. And during this -- I think you said that  
4 you remember Jerry Armenta being there; right?

5 A. Yes. And I remember Javier Rubio was  
6 there. Ben Clark. Paul Rivera may have been there.

7 Q. Was there more than one party that you  
8 attended, or social engagement?

9 A. Well, I think you would probably suggest  
10 that there was one more, yes. Timothy Martinez  
11 graduated from college while in prison, and I  
12 attended that, as well.

13 Q. Timothy Martinez? Do you remember when  
14 that occurred?

15 A. I don't. I have some records of it  
16 somewhere. But it was -- if you want me to give you  
17 a rough estimation, it was -- I'm trying to remember  
18 what facility. It was at Sandoval. So this would  
19 have been post L pod, post PNM, and before the  
20 compromise of the tablets. That would be my time  
21 line.

22 Q. When was the compromise of the tablets?

23 A. Off the top of my head, I couldn't tell  
24 you. I did write some documentation and some  
25 reports on it. I just don't recall a date as I sit

1 here.

2 Q. You said that was at Sandoval?

3 A. Yes.

4 Q. But Timothy Martinez's party.

5 A. The graduation, yes.

6 Q. Graduation. All right. And Timothy  
7 Martinez is the same individual who choked out his  
8 friend Javier Molina so he could be stabbed to  
9 death?

10 A. That's the same Timothy Martinez.

11 Q. This party occurred after that; right?

12 A. Yes.

13 Q. "Sandoval" is the Sandoval County  
14 Detention Center, isn't it?

15 A. It is.

16 Q. And the Sandoval County Detention Center  
17 is a place where individuals who are pending federal  
18 charges can be held?

19 A. It's one of many, yes.

20 Q. And Mr. Martinez was held there at some  
21 point?

22 A. Correct.

23 Q. And wasn't he held there with a number of  
24 other cooperating witnesses?

25 A. Yes.

1 Q. And they were held together?

2 A. They were in the same pod.

3 Q. And a pod is --

4 A. I'm sorry, they were -- yes, some were.  
5 Some were in another area of the detention center.

6 Q. You're aware, are you not, that Timothy  
7 Martinez was selling Suboxone in Sandoval County  
8 Detention Center?

9 A. I didn't conduct any investigations of  
10 that. But there was Suboxone all over that  
11 facility.

12 Q. What's Suboxone?

13 A. Suboxone is a prescription narcotic to  
14 help heroin users.

15 Q. And if you take Suboxone and you're not a  
16 regular heroin user, it gets you high, doesn't it?

17 A. That's what I've been told, yes.

18 Q. So it's often sold in jails and prisons so  
19 people can get high?

20 A. Yes, sir.

21 Q. And it's easy, isn't it, to hide, because  
22 it's, like, on these small, little strips?

23 A. Yes.

24 Q. So would you disagree with me if Mr.  
25 Castellano wrote me a letter and told me that Roy

1 Martinez, another cooperating witness, bought  
2 Suboxone from Timothy Martinez while in custody in  
3 Sandoval County?

4 A. I believe Mr. Castellano, and I believe  
5 your representation.

6 Q. Okay. Do you know if Mr. Martinez was  
7 selling Suboxone while he was taking his college  
8 classes?

9 A. I don't know.

10 Q. So let's go back to the social engagement.  
11 That was up at PNM; right?

12 A. Yes.

13 Q. In a different timeframe than the  
14 graduation party.

15 A. Yes.

16 Q. And you don't remember if Billy Cordova  
17 was at that social engagement?

18 A. I put it in my documentation to the U.S.  
19 Attorney's Office when I was requested to list out  
20 all these benefits and things of this nature. I'd  
21 have to refer to that. He may have been.

22 Q. Do you remember socializing with Billy  
23 Cordova?

24 A. I don't socialize with any of my  
25 informants.

1 Q. Well, when you go to a social engagement  
2 with them, would you consider that socializing?

3 A. Very minimally. It would look a lot  
4 different if you and I went somewhere and  
5 socialized. I don't eat the food. I say "Hello."  
6 I show up. And I leave.

7 Q. So you didn't talk to Mr. Cordova about  
8 the murders that you stopped investigating on him?

9 A. At these so-called social functions?

10 Q. Yeah.

11 A. No.

12 Q. Did you talk to Mr. Armenta about what it  
13 was like to stab Javier Molina to death?

14 A. I didn't ask any investigative questions.  
15 I kept my presence there to the shortest of a time  
16 as I could.

17 Q. But you showed up.

18 A. I've said that, yes.

19 Q. Why?

20 A. With these guys, it's all about respect.  
21 And I have to show it at times without compromising  
22 who I am or what I do. So I show up, I show my  
23 respect. I don't eat food. I don't get to know  
24 family members. I make my presence known, and I  
25 leave. I get back to work.

1 Q. So let me go back to --

2 THE COURT: Let me ask you this, Mr.  
3 Villa. I'm thinking of breaking for about 15  
4 minutes, letting everybody rest. Then we'll go  
5 about another 45. Would this be a good place for us  
6 to do that?

7 MR. VILLA: Yes, Your Honor.

8 THE COURT: All right. I'm not going to  
9 give those instructions again. Keep them in mind.  
10 All rise.

11 (The jury left the courtroom.)

12 THE COURT: All right. We'll be in recess  
13 for about 15 minutes.

14 (Court was in recess.)

15 THE COURT: All right. Let's go on the  
16 record.

17 Did you have anything else, Mr. Villa?

18 Ms. Fox-Young, on yours, are you just  
19 going to give me a letter?

20 MS. FOX-YOUNG: Yes, we'll just do a  
21 letter.

22 THE COURT: Anybody else got anything  
23 before Ms. Standridge gets the jury? The  
24 Government?

25 MS. ARMIJO: We do have something to

1 raise, but we could do it later.

2 THE COURT: Go ahead while she's getting  
3 the jurors.

4 MS. ARMIJO: Your Honor, we will be  
5 submitting a letter to the Court, or possibly a  
6 motion. We believe that Mr. Lowry's opening  
7 statement has created an issue now for his -- the  
8 issue regarding the conflict of interest.

9 As you'll recall -- and we have a  
10 transcript -- you indicated that you thought this  
11 instant case and Duran's prior civil case are not  
12 related. But based upon his opening statements,  
13 where Mr. Lowry personally went into great detail  
14 about providing a motive for Mr. Duran's previous  
15 beatdown, which was the basis of Mr. Donatelli's  
16 representation, they're using that as part of their  
17 defense. We believe that potentially raises an  
18 issue for a conflict.

19 THE COURT: Was everything you said just  
20 public record?

21 MR. LOWRY: Absolutely, Your Honor.

22 THE COURT: And you're still not planning  
23 to --

24 MR. LOWRY: Absolutely was not part of Mr.  
25 Donatelli's representation. Actually, it was part



1 of the United States' prosecution of the three  
2 prison guards at Lea County Correctional.

3 THE COURT: Assuming that -- and I have to  
4 assume Mr. Lowry is being truthful there -- that all  
5 he did was rely on public record information, I  
6 wouldn't be inclined to change my ruling.

7 And you're still not going to  
8 cross-examine --

9 MR. LOWRY: No, not at all.

10 THE COURT: I still think we're in place.  
11 We didn't discuss, pretrial, him not using it in  
12 opening. So I'm not inclined to ding him on that.

13 Anything else, Ms. Armijo?

14 MS. ARMIJO: No, Your Honor. I think  
15 that -- for the record, I think our office will  
16 still send something.

17 MR. CASTELLANO: I do have one quick  
18 thing, Your Honor. In opening statements, they  
19 mentioned where Eric Duran moved after he left New  
20 Mexico. And I just want to --

21 THE COURT: Why don't we do this? If the  
22 jury is ready -- are they ready?

23 THE CLERK: They are.

24 THE COURT: I'll let you make that a  
25 little bit later. All rise.

1 (The jury entered the courtroom.)

2 THE COURT: All right. Everyone be  
3 seated. All right.

4 Mr. Acee, I'll remind you that you're  
5 still under oath.

6 Mr. Villa, if you wish to continue your  
7 cross-examination of Mr. Acee, you may do so at this  
8 time.

9 MR. VILLA: Yes, sir, thank you.

10 THE COURT: Mr. Villa.

11 BY MR. VILLA:

12 Q. Agent Acee, I want to go back to the four  
13 killers of Javier Molina: Jerry Montoya, Jerry  
14 Armenta, Timothy Martinez, and Mario Rodriguez.  
15 They were all paid money; correct?

16 A. Yes.

17 Q. When I say "paid money," I mean paid money  
18 by the FBI?

19 A. Yes.

20 Q. After they cooperated.

21 A. Correct.

22 Q. After they entered into the plea  
23 agreements we talked about before the break, in  
24 which they'll have an opportunity to argue for less  
25 than a life sentence for murdering Javier Molina?

1           A.    As soon as they agreed to cooperate, they  
2   were opened.  And then what I've described as the  
3   \$50 a month in commissary money was put on their  
4   accounts.

5           Q.    For Jerry Armenta, that totaled \$750?

6           A.    If that's the aggregate total, then yes.

7           Q.    Is that a yes?

8           A.    If that's what you have there -- I'm not  
9   looking at it -- I believe you.

10          Q.    Okay.  I mean, does that sound right?

11          A.    Yes.

12          Q.    Do you want to see it?

13          A.    Mr. Villa, I don't doubt your credibility.

14          Q.    All right.  So Timothy Martinez received  
15   an aggregate total of \$1,062.86.  Does that sound  
16   right?

17          A.    Yes.

18          Q.    So in addition to receiving that money, he  
19   also is going to get to argue for a lesser sentence  
20   for his testimony he's going to provide in this  
21   trial.

22          A.    He could, yes.

23          Q.    Jerry Montoya received an aggregate total  
24   of \$824.31?

25          A.    Yes.

1 Q. And he'll also get to argue for a  
2 reduction in his sentence for the killing of Javier  
3 Molina in exchange for his testimony in this trial.

4 A. And his attorney could do that.

5 Q. Were any of these four individuals told  
6 that they were going to get a specific sentence in  
7 exchange for their cooperation?

8 A. Not by me. I wouldn't make those  
9 representations, and I don't believe I heard anyone  
10 else do that, either.

11 Q. Nothing material where --

12 A. A specific sentence, no. I'm not in those  
13 calculations or conversations, though.

14 Q. When you open an informant, like you did  
15 with Billy Cordova, you have to go over certain  
16 rules with them; right?

17 A. Yes, sir.

18 Q. Rules that they're expected to follow.

19 A. Correct.

20 Q. If they don't follow their rules, like you  
21 testified on direct, you have to close them as an  
22 informant.

23 A. I don't have to. That's my choice. I can  
24 request to keep them open despite that. I can do  
25 memorandums justifying keeping them open. In none

1 of these cases did I do that, and if they didn't  
2 follow my instructions, I closed them.

3 Q. Because if they don't follow your  
4 instructions, it's hard to trust them, isn't it?

5 A. It's hard to control them. I have guys  
6 that -- they're dope fiends, and they'll go back to  
7 drugs, but they've never told me a lie.

8 Q. I didn't say a lie. I said it's hard to  
9 trust them.

10 A. Yes.

11 Q. Maybe they lied; maybe they didn't. But  
12 it's hard to trust them.

13 A. If they don't follow instructions, it's  
14 hard for me to trust them.

15 Q. And if they're dope fiends, it's hard to  
16 trust them.

17 A. That they won't go back to dope. There  
18 are other areas where they're trustworthy, in my  
19 mind.

20 Q. But a dope fiend isn't necessarily as  
21 trustworthy as someone who is clean and sober;  
22 right?

23 A. No, not necessarily.

24 Q. Somebody who is addicted to drugs --  
25 sometimes they'll do anything to get those drugs.

1 A. Some people.

2 Q. And as a matter of fact, you closed Billy  
3 Cordova, didn't you?

4 A. I did.

5 Q. Because he wasn't following the rules.

6 A. Correct.

7 Q. He was breaking the rules.

8 A. Yes.

9 Q. And you made the decision that you  
10 couldn't trust him anymore, so you closed him.

11 A. I don't have trust issues with him. I'm  
12 differentiating there. I just closed him because I  
13 didn't want to give him any more benefits, and I was  
14 no longer interested in keeping him open.

15 Q. If you had kept him open, you could have  
16 him do more cooperation, couldn't you?

17 A. No. I mean, he wanted to continue to  
18 cooperate, but he wasn't -- in terms of doing active  
19 stuff on the streets, if that's what you're  
20 referring to. But that wouldn't have worked.

21 Q. Well, you didn't close him after you had  
22 him record -- or he recorded Rudy Perez, and Rudy  
23 Perez then gets charged. You didn't close him then,  
24 did you?

25 A. No.

1 Q. You didn't close him six months after  
2 that, did you?

3 A. No.

4 Q. You kept paying him money.

5 A. Yes.

6 Q. And one of the things that happens when  
7 you stop, when you close him, is, you don't have to  
8 pay him any money anymore?

9 A. Correct. There is no way for me to do it  
10 anymore, to pay them.

11 Q. With respect to Billy Cordova, one of the  
12 reasons that led you to close him is that he was  
13 violating rules of the prison.

14 A. Yes.

15 Q. He was given contact visits by the prison;  
16 correct?

17 A. He was.

18 Q. And a contact visit is where he can  
19 actually be in the same room with a family member, a  
20 friend, where they're not talking between glass;  
21 right?

22 A. I'm not sure. I just know what he did  
23 wasn't allowed. I've never been to a contact visit,  
24 so I kind of hate to say what they look like. But  
25 there are definitely rules. What I know is that

1 what Mr. Cordova did during some of those was not  
2 allowed.

3 Q. Agent Acee, you've been investigating the  
4 SNM since spring of 2015.

5 A. Yes, sir.

6 Q. And you are investigating some of their  
7 classification levels; right?

8 A. No.

9 Q. Well, you testified with Mr. Castellano  
10 that you know that the New Mexico prisons kept  
11 alleged gang members in Level 4, 5 or 6; right?

12 A. I only know about 5 and 6.

13 Q. Oh, I'm sorry.

14 A. I can speak about those, yes.

15 Q. 5 and 6.

16 A. I have knowledge on 5 and 6. I don't know  
17 much about the other programs. They didn't come  
18 into play in this investigation.

19 Q. In the course of your investigation, you  
20 learned that alleged gang members who were held in  
21 Level 5 and 6 don't get contact visits; right?

22 A. Correct. I think that starts at Level 4.

23 Q. That starts at Level 4?

24 A. That's what I recall, yes.

25 Q. And you may not know what a contact visit



1 looks like, but when you investigated this case and  
2 heard the term "contact visit," can you please tell  
3 the jury what you understood that to mean?

4 A. They could see their families. In some  
5 facilities, I guess, they're allowed to kiss their  
6 children, just once. The reason I struggle with  
7 defining what exactly they are is, it seems  
8 different at facilities. And that may have to do  
9 with the levels. When I interact with an inmate at  
10 the facility, it's as an attorney visit or it's in a  
11 secluded area. So the rules are different.

12 Q. But a contact visit is where they can  
13 touch a family member? Hence the word "contact";  
14 right?

15 A. Yes.

16 Q. I mean, that's fair?

17 A. Yeah. I just hesitate to define something  
18 I don't know a lot about. In other facilities there  
19 are contact visits and there's glass. So I'm not  
20 really sure.

21 Q. Fair enough. You would agree with me,  
22 though, that the prisons when they were housing Mr.  
23 Cordova and housing some of these other cooperators,  
24 including Jerry Armenta, were giving them privileges  
25 that they didn't normally get in the classification

1 level that they were in?

2 A. That's part of the controversy. That's  
3 part of the problem, because I'm not sure what  
4 classification level they were at that point. They  
5 were housed at Level 6 for security, but because  
6 they were cooperating and had renounced the gang,  
7 Corrections would have put them at a Level 4. There  
8 just wasn't a safe Level 4 to put them at. So I'm  
9 not really sure how to answer that.

10 Q. I think it was your testimony that the  
11 denial of the contact visit starts at Level 4?

12 A. I think contact visits start at Level 4  
13 and the denial starts at 5. But I don't work for  
14 the Corrections Department and I hesitate to sit  
15 here and testify to what their policies are.

16 Q. In any case, Mr. Cordova, unlike someone  
17 else in Level 6, was given contact visits.

18 A. Mr. Cordova was given contact visits.

19 Q. And in those contact visits, he was  
20 visiting with his wife and children?

21 A. Yes.

22 Q. And in the course of those contact visits,  
23 he was having sex with his wife; correct?

24 A. I believe that he did during more than one  
25 occasion, yes.

1 Q. Do any contact visits that you're aware of  
2 in the State of New Mexico allow an inmate to have  
3 sex?

4 A. No.

5 Q. So he was violating the rules?

6 A. Absolutely.

7 Q. He wasn't just having sex with his wife in  
8 those contact rooms, was he?

9 A. Are you asking if he had sex somewhere  
10 else?

11 Q. No, I'm asking what else was going on in  
12 those contact rooms.

13 A. I'm not sure what you're asking.

14 Q. Let me ask the question this way: Was he  
15 not having sex with his wife in front of his  
16 children in the contact visit rooms?

17 A. His children were in the rooms. He and  
18 his wife covered up, like you don't see any skin.  
19 But when I watched the video of it, I believe they  
20 were having sex. There was no doubt in my mind when  
21 I saw it.

22 Q. And the children are there?

23 A. The children are on the other side of the  
24 table.

25 Q. Has Mr. Cordova ever been charged with

1 child abuse for that?

2 A. No, he wasn't charged. We contacted the  
3 State Police and asked them to investigate, and also  
4 contacted Child Protective Services, CYFD. We made  
5 all the notifications as soon as we found out.

6 Q. And after Mr. Cordova did that, you closed  
7 him as an informant?

8 A. Yes, sir.

9 MR. VILLA: May I have a moment, Your  
10 Honor?

11 THE COURT: You may.

12 MR. VILLA: No further questions.

13 THE COURT: Thank you, Mr. Villa.

14 Ms. Jacks, do you have cross-examination  
15 of Mr. Acee on behalf of Mr. Sanchez?

16 MS. JACKS: I do, Your Honor. Thank you.

17 THE COURT: Ms. Jacks.

18 CROSS-EXAMINATION

19 BY MS. JACKS:

20 Q. Good afternoon, Agent Acee.

21 A. Ms. Jacks.

22 Q. I noticed earlier, when Ms. Armijo was  
23 asking you questions, that instead of looking at her  
24 when you'd answer, you sort of turned to the jury to  
25 answer. You realize you were doing that; right?

1 A. I try to do that when answering.

2 Q. Okay. And that's something that you're  
3 actually trained to do as part of your -- as part of  
4 your law enforcement training?

5 A. I don't recall if that's training. I just  
6 think it's polite. It seems like why we're here.

7 Q. So you weren't trained on that? You  
8 weren't trained on ways to testify to juries?

9 A. I was trained on how to testify. I don't  
10 know that they added the caveat "to juries."

11 Q. And in that training, were you taught to  
12 turn and swivel your chair over and look at the  
13 jury?

14 A. I've answered. I don't know that I was  
15 taught that. That was about 20 years ago.

16 Q. All right.

17 MS. JACKS: Can we have exhibits starting  
18 with 548? Thank you.

19 Q. And this is the series of pictures that  
20 Mr. Castellano showed you of Mr. Sanchez?

21 A. Yes, ma'am.

22 Q. I have just a couple of general questions  
23 first. You were shown a bunch of different  
24 photographs, and you were asked about a bunch of  
25 different tattoos. On some of your answers you said

1 things like -- and this was in reference to Timothy  
2 Martinez, one of the photos, you said none of those  
3 tattoos were gang-specific. And think for some of  
4 the other pictures you were shown, you said, quote,  
5 "The tattoos don't mean anything." Do you recall  
6 those answers?

7 A. Yes, ma'am.

8 Q. Okay. So I guess my question is: When  
9 you testify about a tattoo, was that meant to imply  
10 that it meant something? Do you know what I mean?  
11 Like if you said something about a tattoo, does that  
12 mean, in your mind, it had some significance?

13 A. Yes.

14 Q. Okay. Because you testified about a bunch  
15 of tattoos regarding Mr. Sanchez, and I want to ask  
16 you about that. But before I do, would you agree  
17 with me that New Mexico State prisons are, for the  
18 most part, filled with New Mexico state residents?

19 A. Yes.

20 Q. All right. And are tattoos popular in  
21 prison?

22 A. Yes.

23 Q. I mean, they're popular outside of prison,  
24 too, these days; right?

25 A. I agree.

1 Q. But in prison, if you -- I mean, wouldn't  
2 the majority of inmates in prison be tattooed?

3 A. The ones I've seen, yes.

4 Q. In some manner.

5 A. Yes.

6 Q. Would it almost be shocking to find a  
7 prison inmate in the state of New Mexico that had no  
8 tattoos?

9 A. Maybe in the white-collar section or  
10 something.

11 Q. Do you know why tattoos are popular in  
12 prison?

13 A. Yes.

14 Q. Why?

15 A. To display various things. In some cases,  
16 gang membership; in others, pride in certain things.  
17 Sometimes they display family names. I think  
18 there's a number of reasons.

19 Q. Okay. And it's also against the rules to  
20 get a tattoo in prison, isn't it?

21 A. While you're in prison, yes.

22 Q. Right. So in some ways, by getting a  
23 tattoo while you're in prison, the person is sort of  
24 displaying an act of rebellion against the prison.

25 A. I don't know what they're displaying, but

1 they're getting tattoos.

2 Q. People get tattooed in prison all the  
3 time, even though it's against the rules.

4 A. Yes.

5 Q. And Mr. Castellano asked you some  
6 questions -- well, let me go back for a second. Do  
7 you think it has anything to do with the boredom of  
8 prison that people get tattooed?

9 MR. CASTELLANO: Objection, calls for  
10 speculation.

11 THE COURT: Ask him if he knows.

12 BY MS. JACKS:

13 Q. If you know. That's all I'm asking.

14 A. I don't know.

15 Q. Mr. Castellano asked you some questions  
16 about popular tattoos, and I think you said one  
17 subject matter of popular tattoos is women.

18 A. Yes.

19 Q. Why do you think that tattoos of women,  
20 and in particular, partially clothed or naked women  
21 are popular in prison?

22 A. Because a prison is full of men.

23 Q. And another popular tattoo is, I think you  
24 said, guns.

25 A. I don't think I said that. I think I



1 pointed out a gun.

2 Q. Why would a prison inmate have a tattoo of  
3 a gun? What does an image of a gun convey?

4 A. Violence.

5 Q. Power?

6 A. Yes.

7 Q. Toughness?

8 A. Yes.

9 Q. Those are all qualities that, in prison,  
10 someone would want to communicate to others; right?

11 A. Yes.

12 Q. So that people leave you alone.

13 A. For a number of reasons, that among them.

14 Q. That's a big reason; right?

15 A. Yes.

16 Q. And then the other tattoo I think you  
17 talked about was tattoos involving dollar signs or  
18 money.

19 A. Yes.

20 Q. And what is that, in your opinion? What  
21 is that meant to convey?

22 A. Wealth, what you value, money, women, a  
23 hard life, guns, toughness.

24 Q. Going back to the money, is valuing money  
25 or worshiping money isolated to the prison

1 environment?

2 A. No.

3 Q. I mean, that's kind of, at least for a lot  
4 of people in the United States, almost a religion;  
5 right?

6 A. Sure.

7 Q. So tattoos of women, guns, and money don't  
8 necessarily mean that a person is affiliated with  
9 either a street gang or a prison gang?

10 A. I wouldn't say that, no. I'm not claiming  
11 that those tattoos alone mean anything more than  
12 what you've described.

13 Q. Okay. Let's just look at the pictures of  
14 Mr. Sanchez for a second, and let's start with what  
15 you had up there, 548. And I'm just going to sort  
16 of flip through them, because I don't have them  
17 memorized. So let's go. This is Mr. Sanchez the  
18 morning that everybody was arrested on this  
19 indictment; right?

20 A. In phase 1, yes, ma'am.

21 Q. And where was he picked up from?

22 A. Penitentiary of New Mexico -- no. Well,  
23 excuse me. He was in Massachusetts, and we caused  
24 him to be transferred back to New Mexico. And I  
25 think he went to the Pen. I hesitate, because he

1 could have been at Central, because that's their  
2 processing center. Either way, he was in a State of  
3 New Mexico prison.

4 Q. And you just don't remember right now  
5 which one?

6 A. I think he was at the North, but he could  
7 have been at Central.

8 Q. So he was driven from prison to this  
9 office in Albuquerque where he was photographed;  
10 right?

11 A. Yes.

12 Q. Okay. Let's go to the next picture. This  
13 is 549. All right. Now, you testified about this  
14 when Mr. Castellano asked you some questions. This  
15 is a tattoo on Mr. Sanchez's stomach; right?

16 A. There is a tattoo on his stomach, but I  
17 didn't talk about it.

18 Q. What is the tattoo on the stomach?

19 A. It looks like a depiction of The Last  
20 Supper.

21 Q. So would that be a religious tattoo?

22 A. I believe so.

23 Q. And the things you testified about were  
24 the N and M on his arms?

25 A. Yes, ma'am.

1 Q. Is Mr. Sanchez from the state of New  
2 Mexico?

3 A. He is.

4 Q. And do you know where?

5 A. Belen.

6 Q. And N and M -- are those the initials for  
7 the state of New Mexico?

8 A. Right.

9 Q. And is it uncommon for prison inmates from  
10 the state of New Mexico to have the N and the M,  
11 signifying they're from the state of New Mexico?

12 A. No.

13 Q. And the N and the M alone, with nothing  
14 else, don't signify any sort of membership in a  
15 prison gang or street gang, do they?

16 A. I agree with you.

17 Q. You agree with me that they don't?

18 A. They don't.

19 Q. Can we have the next one, which would be  
20 550? That's just the N that we just talked about;  
21 right?

22 A. Yes, ma'am.

23 Q. Can we go to the next one? There is the  
24 M, so that's 552.

25 Can we go to the next one, 553?

1 All right. In this picture, in Exhibit  
2 553, I think you testified about the symbol on Mr.  
3 Sanchez' -- I guess it would be left elbow?

4 A. Yes.

5 Q. And what is that symbol?

6 A. Zia.

7 Q. Okay. What is the Zia symbol?

8 A. The Zia symbol is the same symbol you see  
9 on the New Mexican flag. I can't tell you the  
10 history of the Zia.

11 Q. And it's on street signs in New Mexico;  
12 right?

13 A. It is.

14 Q. Coffee cups, license plates, T shirts,  
15 bumper stickers?

16 A. And other places, as well.

17 Q. It's displayed everywhere throughout the  
18 state, isn't it?

19 A. It's in a lot of places around the state.

20 Q. As a symbol of pride for the state of New  
21 Mexico?

22 A. I agree.

23 Q. Now, is the fact that Mr. Sanchez has a  
24 Zia tattoo on his elbow some indication that he's a  
25 member of a prison gang?

1 A. Could be. Would you like me to explain?

2 Q. No, because I'm going to ask you another  
3 question. You said it could be, but you would agree  
4 with me that it also couldn't be; right?

5 A. Right.

6 Q. It may be; it may not be?

7 A. Correct.

8 Q. Now, is there a particular tattoo that is  
9 identified with the SNM Gang that involves the Zia  
10 symbol?

11 A. Yes.

12 Q. And can you describe that?

13 A. It is the Zia symbol in the old days; and  
14 then more commonly now it's the Zia symbol with an S  
15 in it, because other gangs have adopted the Zia  
16 symbol.

17 Q. So can we have -- let me just see if I  
18 can -- can we have Exhibit 604, please?

19 And 604 I think was one of the photographs  
20 of Jerry Montoya; is that right?

21 A. It is.

22 Q. And can you describe here what the tattoo  
23 that we're viewing in this photograph is?

24 A. Behind Mr. Montoya's ear is a tattoo of  
25 the Zia symbol with an S in the center.

1 Q. And that's a tattoo that is unique to the  
2 SNM Gang; is that right?

3 A. It is.

4 Q. And people that display that tattoo are  
5 identified or are in the SNM Gang?

6 A. Better be.

7 Q. You can't -- at least in prison, you can't  
8 display a tattoo like this unless you're a member of  
9 SNM.

10 A. Well, you could. And I understand one or  
11 two people have. But it's going to cause you  
12 problems.

13 Q. So it would be unlikely that someone would  
14 do that?

15 A. Yes.

16 Q. Can we see 637?

17 This is David Calbert?

18 A. Yes.

19 Q. And can we see 638? I think it's a  
20 close-up of a similar tattoo.

21 Can you describe what we're seeing here on  
22 Mr. Calbert in this photograph?

23 A. The chin and the neck, or just the neck?

24 Q. The neck.

25 A. On his neck he has a Zia symbol with an S

1 in the middle.

2 Q. And again, that's the type of Zia symbol  
3 with the S in the middle that would be displayed by  
4 SNM Gang members?

5 A. Yes.

6 Q. And the fact that -- the picture also  
7 displays an S on Mr. Calbert's chin; right?

8 A. Yes.

9 Q. And that's a tattoo associated with the  
10 SNM Gang?

11 A. Yes.

12 Q. So the fact that somebody would have a  
13 tattoo like that, the S or the S with the Zia symbol  
14 on their chin and neck -- is that of particular  
15 significance?

16 A. Yes.

17 Q. Why?

18 A. You want everybody to see it.

19 Q. No way to cover it up; right?

20 A. No way to cover it up.

21 Q. So when Mr. Calbert walks out onto the  
22 prison yard, everybody knows right away what he's  
23 claiming.

24 A. Correct. Unless he grows his beard out, I  
25 guess.



1 Q. And could we have 569?

2 Is this Roy Paul Martinez?

3 A. Yes.

4 Q. Exhibit 569?

5 A. Yes.

6 Q. And I think the close-up is the next  
7 slide, 570. What's the tattoo that we see on Mr.  
8 Roy Paul Martinez' stomach?

9 A. It's a Zia symbol and it has an S over an  
10 N-M.

11 Q. So he's got all three initials in the  
12 middle of the Zia symbol.

13 A. Correct.

14 Q. Is that a tattoo uniquely associated with  
15 the SNM?

16 A. It is.

17 Q. Can we go back now -- I'm sorry. Why  
18 don't we start -- I think we're at 550, with Mr.  
19 Sanchez. Let's go to 551.

20 Is there anything other than the M that's  
21 of significance in this photograph, 551, of Mr.  
22 Sanchez?

23 A. Well, there's a lot of things significant  
24 to me, but I think Mr. Castellano wanted  
25 gang-specific tattoos.

1 Q. Right. So nothing gang-specific?

2 A. No.

3 Q. Can we go to 552?

4 And this is Mr. Sanchez' other arm?

5 A. Yes.

6 Q. Also displaying a Zia symbol with nothing  
7 in the middle? It may be shown better in 553. Is  
8 it?

9 A. It shows the Zia symbol on his elbow.

10 Q. Okay. Can we go to 554?

11 Now, you testified about Mr. Sanchez' back  
12 when Mr. Castellano was asking you some questions.  
13 We see his name; right?

14 A. Yes.

15 Q. Is that a tattoo that's affiliated with  
16 his -- with some sort of street gang or prison gang  
17 membership?

18 A. Not his name, no.

19 Q. And what about his hometown, Belen?

20 A. Could be.

21 Q. Could be and could not be; right?

22 A. I'd have to, yeah, talk to him and find  
23 out.

24 Q. Based on what you know sitting up there on  
25 the witness stand, you don't know one way or the

1 other, do you?

2 A. I actually don't believe he was part of a  
3 street gang.

4 Q. So in other words, that may just be Mr.  
5 Sanchez putting the name of his hometown on his  
6 neck?

7 A. Yes.

8 Q. And this female wearing a sombrero that  
9 says "Sanchez" on it -- what's the significance of  
10 that, if any, to determining whether Mr. Sanchez is  
11 a member of SNM?

12 A. Some of the older SNM members have  
13 explained to me that --

14 Q. I'm going to stop you right there, because  
15 that would be hearsay; right?

16 A. Okay.

17 Q. So if you just tell me what you think the  
18 significance is yourself, if you know.

19 A. It could signify membership in the SNM.

20 Q. Do you know, with respect to Mr. Sanchez,  
21 what the meaning of that tattoo is?

22 A. No.

23 Q. And the fact that he has it -- you're not  
24 able to say this shows that he's a member of SNM;  
25 right?

1 A. Based on the tattoo alone, no.

2 Q. Can we go to the next one?

3 This is just another side shot. If there  
4 are more pictures you want to see, let me know. But  
5 I want to ask you this question. Based on your  
6 review of the tattoos that Mr. Sanchez displayed --  
7 let me go back a second. We've seen examples of  
8 people that were claiming street gang membership and  
9 they had tattoos consistent with being a street gang  
10 member. I think I recall on one leg it would say  
11 "west," on the other leg it would say "side," things  
12 like that.

13 A. Yes.

14 Q. Burquenos on somebody's stomach, I think?

15 A. It shouldn't say that. But maybe Burque,  
16 or something like that. Another gang.

17 Q. So my question to you is: Does Mr.  
18 Sanchez, based on your inspection of his body, have  
19 any tattoos that signify some sort of street gang  
20 membership or affiliation?

21 A. I didn't see any street gang affiliation.

22 Q. And does he have any tattoos of peacocks,  
23 which, for some reason, you're saying is associated  
24 with the SNM?

25 A. I didn't see any.

1 Q. And does he have any tattoos of Zia  
2 symbols that are filled in in the middle displaying  
3 either S, or SNM, or anything of that nature?

4 A. He has Zias, but not with an S in them.

5 Q. Now, do you know when Mr. Sanchez got --  
6 let me go back a second. Does Mr. Sanchez have a  
7 tattoo of Pancho Villa on his body?

8 A. He may. I'd have to look closer.

9 Q. Do you know what the significance or why  
10 somebody would have a Pancho Villa tattoo?

11 A. Heritage. Could be just pride in one's  
12 ethnicity.

13 Q. Do you know when Mr. Sanchez got any of  
14 these tattoos?

15 A. I do not.

16 Q. Do you know where he got any of the  
17 tattoos?

18 A. I suspect in prison.

19 Q. But we're here in court, and I guess we  
20 operate on things that people know and can prove.  
21 So my question again is: Do you know where he got  
22 these tattoos?

23 A. No.

24 Q. Can we have Exhibit 574, please.

25 This is a person you also -- that was also

1 arrested on December 3, 2015?

2 A. Yes.

3 Q. Who is it?

4 A. Robert Martinez.

5 Q. Was Robert Martinez arrested in prison or  
6 jail, or was he arrested on the streets?

7 A. In prison.

8 Q. Where was he housed when he was arrested?

9 A. PNM.

10 Q. I want to follow up just on a few  
11 questions that Mr. Lowry asked you. I think he  
12 asked you some questions about Eric Duran and your  
13 supplying a cellphone to Mr. Duran. Do you recall  
14 those questions?

15 A. I do.

16 Q. And your testimony is that you gave  
17 Mr. Duran -- you bought a cellphone for Mr. Duran  
18 and you gave it to him so he could assist you in  
19 investigating this case.

20 A. Yes.

21 Q. And he gave you that assistance and ended  
22 up getting out of jail early on his sentence?

23 A. He got out of prison early.

24 Q. And you relocated him?

25 A. Yes.

1 Q. And you got him a job working for a  
2 different federal law enforcement agency?

3 A. I transferred him to another division, and  
4 it was up to those agents if they wanted to work  
5 with him. I just made the introduction.

6 Q. And they, in fact, did work with him and  
7 pay him; right?

8 A. They did.

9 Q. Up until when he got arrested again?

10 A. Yes, shortly. They stopped working with  
11 him a little bit before then, because it took us a  
12 little while to find him.

13 Q. Well, he got arrested. Do you remember  
14 when?

15 A. No. I turned over all the reports, but --

16 Q. Was it fairly recently, like, was it in  
17 the fall of 2017?

18 A. Yes. I'm just not sure which arrest  
19 you're asking me about.

20 Q. Okay. He was arrested several times?

21 A. Throughout his life he has been.

22 Q. I want to go back to the phone that you  
23 gave him, because you gave it to him for federal  
24 government business; is that right?

25 A. Yes.

1 Q. And at least in part, he used it for  
2 federal government business.

3 A. He did.

4 Q. Did he also use it to gamble in a  
5 rotisserie football league?

6 A. I don't know if he gambled. I know that  
7 he accessed -- what's it called -- fantasy football  
8 on the phone.

9 Q. And in fact, if you look at the text  
10 messages on the phone, he's giving instructions  
11 about what he wants to bet, and where and when and  
12 which players he wants to play; right?

13 A. I agree with all that except the betting  
14 part. I don't know -- I don't play fantasy  
15 football, so I'm not sure if there is betting  
16 involved. But he's picking players; that's obvious.

17 Q. So he's used a Government-issued cellphone  
18 to play fantasy football while he was sitting in  
19 prison.

20 A. He did until I told him to stop, until I  
21 noticed his data was -- he was using too much data,  
22 and I asked him about it.

23 Q. You have recordings of the phone calls  
24 that he's made; right?

25 A. Yes.



1 Q. And do you also have copies of the text  
2 messages that he sent?

3 A. Yes.

4 Q. Have you listened to those?

5 A. I have not listened to all of the phone  
6 calls, but other agents have.

7 Q. And people have reported to you, as the  
8 agent in charge, what they're finding on this phone;  
9 right?

10 A. Yes, ma'am.

11 Q. Did he use the phone to engage in phone  
12 sex with his girlfriend or wife?

13 A. No, I don't think so.

14 Q. Did he use the phone to solicit money from  
15 females?

16 A. I don't think he used the Government phone  
17 for that.

18 Q. Did he use the phone to talk and exchange  
19 photographs with a stripper?

20 A. He had contact with some females, and I  
21 think one of them was a stripper.

22 Q. And he's doing this from inside the  
23 prison; right?

24 A. Yes.

25 Q. On the Government-issued phone.

1 A. Yes.

2 Q. That's for Government business.

3 A. Yes.

4 Q. Did he use the phone to talk to his family  
5 members?

6 A. I don't believe so.

7 Q. Did he use the phone to text with his  
8 family members?

9 A. Yes.

10 Q. Did he use the phone to text with you?

11 A. Yes.

12 Q. You were asked some questions, I think, by  
13 quite a few lawyers about Billy Cordova, and I want  
14 to follow up on a couple of things. Mr. Cordova was  
15 an individual who agreed to become a Government  
16 witness; is that right?

17 A. Yes.

18 Q. And I think you testified and had an  
19 exchange with Mr. Villa about the first meeting  
20 where you were expecting him to basically tell you  
21 to get lost, and he came in smiling and was  
22 agreeable to cooperating.

23 A. Yes.

24 Q. Okay. Do you know if, prior to that  
25 meeting, Mr. Cordova had any contact with any other

1 cooperators in this case, any other people that were  
2 working as Government witnesses?

3 A. He would have had contact with at least  
4 one, because I was up at the jail to visit a  
5 cooperator that was housed in his pod.

6 Q. Do you know, prior to meeting you, what  
7 Mr. Cordova knew about the type of benefits and  
8 promises the Government was providing cooperating  
9 witnesses in this case?

10 A. No, he wouldn't have known.

11 Q. You're saying he wouldn't have known?

12 A. He would not have known. The informant at  
13 the jail was not an FBI informant. It was a County  
14 informant.

15 Q. But do you know whether Mr. Cordova had  
16 contact with others aside from that person that  
17 you're thinking about?

18 A. Yes, he did. He was in an SNM pod, but I  
19 didn't have cooperators in there.

20 Q. But word gets around prison pretty quick,  
21 doesn't it?

22 A. Word can travel around prison quickly.

23 Q. And you weren't with Mr. Cordova all the  
24 time, were you?

25 A. No.

1 Q. So all you know is what he decides to tell  
2 you.

3 A. At any given time, I only know what people  
4 decide to tell me.

5 Q. When you met with Mr. Cordova to see if he  
6 wanted to be a Government witness, did you threaten  
7 to charge him in a racketeering case?

8 A. Yes.

9 Q. Did you threaten to charge him in a case  
10 that carried punishment of the federal death  
11 penalty?

12 A. No.

13 Q. Did you threaten -- Mr. Cordova has a  
14 brother; right?

15 A. I don't -- he does have a brother.

16 Q. Did you talk to Mr. Cordova about things  
17 his brother did to assist Mr. Cordova in his  
18 criminal activity and threaten to charge his  
19 brother?

20 A. No, nothing like that.

21 Q. Did you promise Mr. Cordova money?

22 A. No.

23 Q. Did you promise him a job, the kind of job  
24 that Mr. Duran got after he got out of the prison?

25 A. No.

1 Q. Never discussed that with him?

2 A. It was discussed on his end. He wanted to  
3 do those kind of things.

4 Q. What made him think that that's the kind  
5 of thing you were doling out?

6 A. A lot of guys like working with us after  
7 they try it. They like still getting the hustle,  
8 and do stuff; but they're doing it for the FBI now.  
9 And that's not uncommon over the years.

10 Q. I guess my question is -- I mean, that may  
11 be true; right? But he also may have asked you  
12 because he knew you gave it to somebody else.

13 A. He may have. He definitely wanted to work  
14 on the streets after his cooperation. But he wanted  
15 to do it in New Mexico, and that was never going to  
16 happen.

17 Q. My question is just simply: How did he  
18 know to even bring that topic up with you? And  
19 you're saying maybe he just brought it up because he  
20 realized that maybe you did stuff like that. But  
21 maybe he brought it up because he knew that somebody  
22 else got that.

23 A. Maybe he watches television. I don't know  
24 where he got it from. But he definitely asked me,  
25 and I didn't want to do that.

1 Q. Now, Mr. Maynard asked you some questions  
2 about Government witnesses making repeated  
3 statements. Do you recall those questions?

4 A. Yes.

5 Q. And about the statements being different  
6 from -- you interview them on day one; they say one  
7 thing. You interview them three months later, and  
8 they say something slightly different, maybe add a  
9 few details. You interview them six months later,  
10 and the statement is maybe more details, a little  
11 bit different than what they told you before.

12 A. There is a lot in what you just said, but  
13 no, my recollection -- and it is my testimony that  
14 it's not that the details changed; it's that, in  
15 questioning them -- these are incidents, in some  
16 cases, that are several years old. And going back,  
17 sleeping on it, thinking about it, they have more to  
18 tell me about it. It's not that -- I can't think of  
19 any instances where the details were different, like  
20 it didn't happen this way; it actually happened this  
21 way. Rather, it was just them expounding on what  
22 they originally told me.

23 Q. Maybe more embellished statements is what  
24 you were referring to when you were talking to Mr.  
25 Maynard.

1 A. No, I wouldn't agree with "more  
2 embellished"; maybe just more details.

3 Q. You would agree with me that the  
4 Government witnesses in this case had access to  
5 computerized tablets that contain what's called the  
6 discovery in the case.

7 A. For some period of time they did.

8 Q. And in addition to police reports, what  
9 sorts of other things are in that body of what's  
10 called discovery?

11 A. Everything that we've uncovered in our  
12 investigation, we, the FBI, turn over to the U.S.  
13 Attorney's Office, who in turn sends all that  
14 discovery to a coordinator, who causes it to be put  
15 on the tablets so that the defendants can review it.  
16 It contains reports of videos -- not only our  
17 reports, but State Police reports, prison reports.

18 Q. Witness statements?

19 A. Statements made by witnesses, victims.

20 Q. Recordings of witness statements?

21 A. Where available, yes.

22 Q. Recordings of telephone conversations?

23 A. Yes.

24 Q. It contains a whole variety of information  
25 about the Government's investigation.

1 A. Correct.

2 Q. And you'd also agree with me that the  
3 Government witnesses in this case have had access to  
4 each other over the period of the investigation.

5 A. Some of them have. Some have never seen  
6 one of the other cooperators.

7 Q. But some of them were housed together so  
8 they could spend 24 hours a day, seven days a week  
9 together.

10 A. Well, it is a prison. They're still in  
11 individual cells, but they had some tier time  
12 together; not 24/7.

13 Q. And as you know, people can talk between  
14 cells, too, can't they?

15 A. You can talk to your neighbors. You can't  
16 talk a few cells away.

17 Q. But I think what you said, when one of the  
18 other lawyers was asking you questions, is that  
19 because these people were Government witnesses, they  
20 were maybe held in Level 6 confinement, but given  
21 Level 4 confinement conditions.

22 A. Some conditions. That's my understanding.

23 Q. Which meant that they had much more time  
24 outside of their cell when they could interact and  
25 speak with each other.



1           A.     Than a Level 6 inmate? Absolutely. They  
2     had Level 4 privileges.

3           Q.     And did you ever at times either encourage  
4     or enable one Government witness to meet with  
5     somebody else that you wanted to be a Government  
6     witness?

7           A.     Yes.

8           Q.     And when you did that -- you did that more  
9     than once, didn't you?

10          A.     Well, I hesitate, because some of them  
11     have attorneys, and they can't do it when they have  
12     an attorney. But in instances where somebody didn't  
13     have an attorney and hadn't been charged, I would  
14     ask them, "Hey, do you think this guy would  
15     cooperate?" I'd feel them out for that member  
16     because I hadn't talked to them yet.

17          Q.     And then you said you'd set up some sort  
18     of meeting or conversation between the two inmates  
19     to see what would come of it.

20          A.     I have done that before, yes.

21          Q.     All right. And when you do have a  
22     Government witness and you set up a meeting like  
23     that, is there something that that Government  
24     witness is potentially benefiting from if the person  
25     you're sending him out to talk to decides to also

1 become a Government witness?

2 A. There could be.

3 Q. What is it that you tell these Government  
4 witnesses about those kinds of contacts and the  
5 potential benefits?

6 A. I don't know that I tell them anything  
7 other than that I want to talk to them. If it's  
8 someone that has pending charges in this case, for  
9 instance, I'm aware that to the extent they help us,  
10 we'll make that known to the judge at the end of the  
11 case.

12 Q. Do you communicate to the witness that "If  
13 you bring somebody else on board, that's going to  
14 look good for you and help reduce your sentence"?

15 A. No, I always hesitate to talk about the  
16 reduction of their sentence, because I'm not part of  
17 that process. As far as what I typically tell them,  
18 if I were speaking to you, is, I would say, "To the  
19 extent that you help me with my investigation, I'll  
20 make that known. If you want to call me as a  
21 witness to have your attorney ask me questions about  
22 how you helped me, I promise you I will answer all  
23 those questions honestly, and I'll show up for  
24 court."

25 Q. Why would somebody want that, quote,

1 "known"?

2 A. Well, we've alleged, you know, violent  
3 crimes and terrible things. And I think that type  
4 of characterization of them now maybe changing their  
5 life and helping the Government and turning the  
6 corner -- I think that might be favorable to them,  
7 and their attorneys might want to call me to provide  
8 that testimony to the Court.

9 THE COURT: Ms. Jacks, would this be a  
10 good time --

11 MS. JACKS: We can. I mean, I'm probably  
12 going to wrap up, but I hate to hold people over.  
13 That's fine.

14 THE COURT: Thank you, Ms. Jacks.

15 All right. Since we're going to be taking  
16 our first break in the evidence overnight, I'm going  
17 to remind you of a few things that are especially  
18 important. Until the trial is completed, you're not  
19 to discuss the trial with anyone or the case with  
20 anyone, whether it's members of your family, people  
21 involved in the trial, or anyone else. And that  
22 includes your fellow jurors. If anyone approaches  
23 you and tries to discuss the trial with you, please  
24 let me know immediately.

25 Also, you must not read or listen to any

1 news reports of the trial. Again, don't get on the  
2 internet and do any research for purposes of this  
3 case.

4 And finally, remember that you must not  
5 talk about anything with any person who is involved  
6 in the trial, even if they don't have anything to do  
7 with the trial. If you need to speak with me,  
8 simply give a note to one of my court security  
9 officers or to Ms. Standridge.

10 I'll start decreasing these tomorrow, but  
11 do keep them in mind each time we take a break,  
12 because they are very, very important.

13 Thanks for your hard work. Let's do the  
14 schedule we did today. Be in there at 8:30, and  
15 we'll try to be ready for you at that time, as well.  
16 Have a good evening. Be safe if you're driving out  
17 of town. See you in the morning.

18 (The jury left the courtroom.)

19 THE COURT: All right. Y'all have a good  
20 evening. See y'all tomorrow.


21 (The Court stood in recess.)  
22  
23  
24  
25

1 UNITED STATES OF AMERICA  
2 STATE OF NEW MEXICO  
3

4 C-E-R-T-I-F-I-C-A-T-E

5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,  
6 Official Court Reporter for the State of New Mexico,  
7 do hereby certify that the foregoing pages  
8 constitute a true transcript of proceedings had  
9 before the said Court, held in the District of New  
10 Mexico, in the matter therein stated.

11 In testimony whereof, I have hereunto set my  
12 hand on this 3rd day of February, 2019.  
13

14   
15 Jennifer Bean, FAPR, RMR-RDR-CCR  
16 Certified Realtime Reporter  
17 United States Court Reporter  
18 NM Certified Court Reporter #94  
19 333 Lomas, Northwest  
20 Albuquerque, New Mexico 87102  
21 Phone: (505) 348-2283  
22 Fax: (505) 843-9492  
23 License expires: 12/31/19  
24  
25

SANTA FE OFFICE  
119 East Marcy, Suite 110  
Santa Fe, NM 87501  
(505) 989-4949  
FAX (505) 820-6349



MAIN OFFICE  
201 Third NW, Suite 1630  
Albuquerque, NM 87102  
(505) 843-9494  
FAX (505) 843-9492  
1-800-669-9492  
e-mail: info@litsupport.com